TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 19[illegible]

No. [illegible]

[illegible]

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 84

CENTRAL OF GEORGIA RAILWAY COMPANY, PETITIONER,

vs.

BROTHERHOOD OF RAILROAD TRAINMEN; LOCAL LODGE No. 721, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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[fol. 1]

IN UNITED STATES COURT FOR THE FIFTH CIRCUIT

15671

BROTHERHOOD OF RAILROAD TRAINMEN, Appellant,

versus

CENTRAL OF GEORGIA RAILWAY COMPANY, Appellee

Appeal from Southern District of Georgia

APPELLANTS' DESIGNATION AS TO PRINTING RECORD—
Filed July 1, 1955

The Clerk is requested that all of the record deposited in this Court by the District Court be printed except as to Defendant's Exhibit Number 1. This exhibit is referred to as such in the transcript of the proceedings, which accompanies the record, and is described therein as "May 25, 1951 Agreements for 1. Wage Increases 2. Cost-of-Living Basis for Wage Rate Adjustments 3. Rules Changes applicable to Road Trainmen, Yardmen, Yardmasters, Stewards, Etc. and for 4. 5-Day Work-Week, and Interim 6-Day Work-Week applicable to Yardmen and Yardmasters." The complete exhibit is in the form of a booklet containing a cover page and 93 pages which is with the record on appeal.

Pursuant to Rule 23, of this Court, it is requested that only certain portions of such Defendant's Exhibit Number 1 be printed, to wit: the cover page, Agreement "A", Agreement "B", Exhibit C, Rules submitted to [fol. 2] referee, and Mediation Agreement. These portions requested to be printed are identified on such cover page and references to them are made thereon by specific page numbers. All other portions of the record, except those specifically requested herein not to be printed, are to be printed.

Respectfully submitted, Wayland K. Sullivan.

Address: Standard Building, Cleveland 15, Ohio.

Benning M. Grice, Counsel for appellant Brotherhood of Railroad Trainmen.

Address: Bankers Insurance Building, Macon, Georgia.

AFFIDAVIT OF SERVICE (omitted in printing)

[fol. 3] IN UNITED STATES COURT OF APPEALS

[Title omitted]

APPELLANTS' AMENDED DESIGNATION AS TO PRINTING RECORD—Filed July 1, 1955

The Clerk is requested that all of the record deposited in this Court by the District Court be printed except as follows: (1) Pages 1 through 70 of the portion of "A Transcript of The Proceedings," such pages dealing with "Hearing On Motion To Dismiss"; and (2) Defendant's Exhibit Number 1. (This exhibit is referred to as such in the transcript of the proceedings, which accompanies the record, and is described therein as "May 25, 1951 Agreements for 1. Wage Increases 2. Cost-of-Living Basis for Wage Rate Adjustments 3. Rules Changes applicable to Road Trainmen, Yardmen, Yardmasters, Stewards, Etc. and for 4. 5-Day Work-Week, and Interim 6-Day Work-[fol. 4] Week applicable to Yardmen and Yardmasters." The complete exhibit is in the form of a booklet containing a cover page and 93 pages which is with the record on appeal.)

Pursuant to Rule 23, of this Court, it is requested that (1) a portion of such Transcript of Proceedings, to-wit pages 1 through 70 dealing with "Hearing on Motion to Dismiss" not be printed but that the remainder of such transcript be printed, and (2) that only certain portions of such Defendant's Exhibit Number 1 be printed, to wit; the cover page, Agreement "A", Agreement "B", Exhibit C, Rules submitted to referee, and Mediation Agreement, (such portions requested to be printed are identified on such

cover page and references to them are made thereon by specific page numbers.) All other portions of the record, except those specifically requested herein not to be printed, are to be printed.

Respectfully submitted, Wayland K. Sullivan.

Address: Standard Building, Cleveland 15, Ohio.

Benning M. Grice, Counsel for appellants, Brotherhood of Railroad Trainmen, et al.

Address: Bankers Insurance Building, Macon, Georgia.

[fol. 5] AFFIDAVIT OF SERVICE (omitted in printing)

[fol. 6] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA, SAVANNAH DIVISION

Civil Action No. 797

CENTRAL OF GEORGIA RAILWAY COMPANY,

vs.

THE BROTHERHOOD OF RAILROAD TRAINMEN, LOCAL LODGE No. 721, Brotherhood of Railroad Trainmen, Z. P. Logan, W. A. Nealey, L. E. Chester, B. G. Byington, W. B. English, J. W. Shirley, J. G. Pardue, and the class of Employees of Central of Georgia Railway Company represented by the foregoing named Defendants

COMPLAINT—Filed February 25, 1955

The complaint of Central of Georgia Railway Company, a Georgia Corporation, respectfully shows:

1

Central of Georgia Railway Company, Plaintiff hereinafter sometimes referred to as the Company, is a corporation chartered under the laws of Georgia, with its princi-

pal office and place of business in Chatham County, Georgia, and is a common carrier of freight and passengers, both in intra and interstate commerce.

2

Plaintiff names herein as Defendants the following:

(a) The Brotherhood of Railroad Trainmen, an unincorporated association with its principal office and place [fol. 7] of business in Cleveland, Ohio, doing business in this County and represented in this County by the Officers of Local Lodge No. 721.

(b) Local Lodge No. 721, Brotherhood of Railroad Trainmen, with its principal office in Chatham County, Georgia, and Z. P. Logan, President, and W. A. Nealey, Secretary thereof, both residents of Chatham County, Georgia.

(c) L. E. Chester, a resident of Florida, individually and as Deputy President of the Brotherhood of Railroad Trainmen.

(d) B. G. Byington, W. B. English, and J. W. Shirley, all of whom are residents of Bibb County, Georgia, individually and as General Chairman, Vice Chairman and Secretary respectively, and J. G. Pardue, who is a resident of Chatham County, Georgia, individually and as officers and members of the Grievance Committee of the Brotherhood of Railroad Trainmen on Central of Georgia Railway Company.

(e) As a class, approximately 450 trainmen and yardmen employed by the Central of Georgia Railway Company.

3

There are approximately 450 trainmen and yardmen employed by the Company who reside in the States of Georgia, Alabama and Tennessee, and are members of the Brotherhood of Railroad Trainmen. All are severally interested in the matters hereby presented to this Court for adjudication, and there is presented by this petition [fol. 8] a common question of law and fact affecting their several rights and common relief is herein sought. The Defendants named above are, therefore, sued as representatives of the class consisting of all the trainmen and

yardmen employed by the Company. Their selection as defendants will fairly insure the adequate representation of that class.

4

All of the aforesaid Defendants will be hereinafter referred to collectively as the "Union" or the "Defendants", The Brotherhood is the accredited bargaining agent under the Railway Labor Act for all of the trainmen employed by the Company. It has as its representatives the aforesaid Grievance Committee and Local Lodge, as well as others, on the lines of the Company.

5

This Court has jurisdiction of this complaint because this is an action arising under the Constitution and laws of the United States regulating interstate commerce. The amount in controversy exceeds the sum of Three Thousand ($3,000) Dollars, exclusive of interest and costs. The jurisdiction is specifically invoked under the provisions of Title 28 U.S.C. 1331 and 1337. Railway Labor Act Title 45, U.S.C. 151 et seq and the Interstate Commerce Act, Title 49 USC, Sec 1, et seq.

6

On the 26th day of May 1954, plaintiff Company filed a petition for a declaratory judgment and injunctive relief in the Superior Court of Chatham County, Georgia, [fol. 9] against the same defendants named herein, seeking to have the Superior Court of Chatham County, Georgia, take jurisdiction of the matter, to enter a declaratory judgment as to the question of whether or not a certain arbitration award between the parties settled the matter subject to arbitration permanently or whether the matter was settled only for the duration of a certain collective bargaining agreement; seeking a temporary restraining order, an interlocutory injunction and a permanent injunction preventing a strike on this point and enforcing the finality of the arbitration award. A copy of said original petition is hereto attached marked Main Exhibit "A" and by reference made a part hereof.

6

7

By first amendment to the original petition in the aforesaid case, paragraph 6 (a) was added thereto as follows: "The aforesaid arbitration award of Referee George Cheney is hereto attached marked Exhibit "D" and by reference made a part hereof. In preparing said Exhibit "D", plaintiff deleted one section which relates to the 'more than one class of service' problem, which has no direct bearing on this issue."

Said Exhibit "D" to the first amendment is the Cheney Award and will not be attached to this petition as an exhibit because it is shown as sub-exhibit "A" to the submission to the National Railroad Adjustment Board which is hereafter referred to in Paragraph 16 of this petition and which submission is hereto attached marked Exhibit "C" and by reference made a part hereof. The [fol. 10] Cheney Award in said submission has had deleted therefrom the section relating to an immaterial problem and also has deleted Exhibits "A" and "B" of the Cheney Award. However, the Cheney Award attached as Exhibit "D" to the first amendment of the aforesaid suit contained Exhibits "A" and "B" of the Cheney Award, and, therefore, said exhibits are hereto attached and by reference made a part hereof marked respectively Exhibit B-1 and B-2.

8

Th second amendment to the original petition attached as an exhibit a very bulky agreement known as "the Washington Agreement" dated May 25, 1951, between the Brotherhood of Railroad Trainmen and various railroads, including the Central. In order not to overwhelm this record with exhibits, said second amendment will not be set out herein. Said second amendment is not essential to a proper statement of this complaint.

9

Immediately prior to the filing of said petition on May 26, 1954, said petition and a temporary restraining order and Rule Nisi were presented to the Honorable B. B.

Heery, Judge of the Superior Court of Chatham County, Georgia, pro hac vice, for his consideration.

10

On the same day, the Honorable B. B. Heery signed said temporary restraining order maintaining the status [fol. 11] quo restraining a strike, and also signed a Rule Nisi calling upon the defendants to show cause why the prayers of the petition should not be granted. This re-training order and Rule were filed with the petition on the same day.

11

Proper service was made of the petition, restraining order and the Rule.

12

Later, the Union filed a general demurrer to the petition seeking to dismiss the same, both as to the merits and also on the grounds that the Superior Court of Chatham County did not have jurisdiction to hear the controversy. These demurrers came on for argument on July 2, 1954, at which hearing the Union took the position that the Superior Court of Chatham County, Georgia, did not have jurisdiction to enter a declaratory judgment as to the meaning and effect of the arbitration award, and argued further that the meaning and effect of the arbitration award should be referred to the National Railroad Adjustment Board pursuant to the Railway Labor Act, Title 45, U. S. Code Annotated.

13

Then, on July 29, 1954, the Superior Court of Chatham County, Georgia, speaking through the Honorable Davis S. Atkinson, handed down its decision overruling the demurrers of the Union on the question of jurisdiction and holding the petition set forth a proper cause to [fol. 12] be considered by the Superior Court of Chatham County, Georgia. The Court, however, sustained the Union's demurrer as to the merits of the controversy and dismissed the petition.

14

The plaintiff Company in that case, which is also the plaintiff in this action, was granted supersedeas and duly filed its bill of exceptions assigning as error the ruling of the Trial Court on the merits of the case. The Union filed a cross bill of exceptions assigning as error the overruling of their demurrer to the jurisdiction of the Court. The appeal was duly taken to the Supreme Court of Georgia.

15

The argument of both the bill of exceptions and the cross bill of exceptions was heard before the Supreme Court of Georgia at which hearing the Union reiterated their argument that the controversy set forth in the petition was not one which should have been submitted to the Superior Court of Chatham County but was one which should have been submitted to the National Railroad Adjustment Board under the Railway Labor Act.

16

The Supreme Court of Georgia took the matter under advisement. Then, on January 10, 1955, in cases No. 18748 and 18749, Central of Georgia Railway Company vs. Brotherhood of Railroad Trainmen, et al., and vice versa, speaking through the Honorable Justice Hawkins, [fol. 13] the Supreme Court handed down its decision reversing the judgment of the Trial Court on the question of jurisdiction and holding that the controversy submitted in the petition should have been referred to the National Railroad Adjustment Board pursuant to the Railway Labor Act and that the Superior Court of Chatham County did not have jurisdiction to interpret the meaning and effect of the arbitration award. The Honorable Justices Wyatt and Mobley dissented. A copy of the majority opinion of the Supreme Court of Georgia in this case is hereto attached and by reference made a part hereof. It is designated as Exhibit "J" to the submission to the National Railroad Adjustment Board, which submission is hereto attached marked Exhibit "C".

17

Before the remittitur was made the judgment of the Trial Court, the Central of Georgia Railway Company, in compliance with the aforesaid decision of the Supreme Court of Georgia, submitted to the National Railroad Adjustment Board, pursuant to the Railway Labor Act, the identical controversy which it had previously submitted to the Superior Court of Chatham County, Georgia. This submission was made to the National Railroad Adjustment Board because the Supreme Court of Georgia had ruled that this should be done. This submission was transmitted to the Honorable J. M. MacLeod, Executive Secretary, First Division, National Railroad Adjustment Board, 39 South LaSalle Street, Chicago, Illinois, by the Director of Personnel of the Central of Georgia Railway Company, on behalf of the Company, in letter dated January 18, 1955, all in accordance with the Railway Labor Act. [fol. 14] Copies of the submission were served on the duly designated representative of the defendants, B. G. Byington, General Chairman, Brotherhood of Railroad Trainmen, P. O. Box 869, Macon, Georgia, as is required by the Railway Labor Act.

18

This submission was duly acknowledged, docketed and filed by the First Division of the National Railroad Adjustment Board and is now in the process of administrative consideration as prescribed by the Railway Labor Act. A copy of said submission together with its exhibits is hereto attached marked Exhibit "C" and by reference is made a part hereof.

19

The remittitur from the Supreme Court of Georgia in the aforesaid appeal has been received by the Clerk of the Superior Court of Chatham County, Georgia, and an order has been entered by the Judge of the Superior Court of Chatham County, Georgia, dismissing the aforesaid case for want of jurisdiction. This judgment also dissolved the restraining order which held the matter in status quo pending the appeal and which prohibited the defendants from striking on the matter in controversy.

20(a)

Then by letter dated January 28, 1955, the Defendant Union by and through Defendant B. G. Byington, General Chairman of the Local Lodges of Defendant Brotherhood of Railroad Trainmen on the Central of Georgia Railway [fol. 15] property, addressed the Executive Secretary of the National Railroad Adjustment Board, acknowledging that the National Railroad Adjustment Board had filed and docketed the submission of this dispute. Said letter also acknowledged that the National Railroad Adjustment Board had directed the Brotherhood to answer the submission of the Central of Georgia Railway Company by not later than February 23, 1955. In said letter Defendant Union requested that the National Railroad Adjustment Board grant an extension of thirty days from February 23, 1955, within which Defendant Union would be required to answer said submission. The National Railroad Adjustment Board by letter dated January 31, 1955, addressed to said Defendant, B. G. Byington, granted said request.

20(b)

Notwithstanding this request for additional time within which to answer the matter pending before the National Railroad Adjustment Board, Defendant Union, by and through Defendant L. E. Chester, on the 14th day of February 1955, addressed the following telegram to W. J. Collins, Director of Personnel, Central of Georgia Railway Company, Savannah, Georgia, and the same was received:

> "In accordance with my statement to you at the conclusion of our conference of February 9th please consider this as formal notice that a strike of the employees we represent on your property is being set for 6 o'clock Friday morning February 18th subject to a satisfactory settlement of the pending hose coupling issue. Should you desire further conferences con- [fol. 16] cerning this matter call me at the Savannah Hotel and I will be pleased to meet with you."

21

Thereafter on the 16th day of February 1955, the National Mediation Board sent the following telegram to W. J. Collins, Director of Personnel, Central of Georgia Railway Company, Savannah, Georgia:

> "Board hereby authorizes its mediation services under provisions of Section 5 first paragraph B in dispute between BRT and Central of Georgia Railway on which organization has set strike date of 600 AM Friday February 18, 1955. This dispute has been given Docket No. A-4755. Mr. Kennedy is requested to postpone strike date pending mediation. Please acknowledge joint Collins and Kennedy."

22

Then on February 16, 1955, the National Mediation Board wired Director of Personnel, W. J. Collins, Central of Georgia Railway Company, Savannah, Georgia, as follows:

> "We have received this date following telegram from W. P. Kennedy President BRT quote Reurtel Case A-4755. Have instructed Vice President Chester to postpone strike date Central of Georgia Railway pending mediation proceedings unquote."

23

Thereafter said strike date was postponed pending mediation. The services of the National Mediation Board were invoked but the parties did not reach an agreement [fol. 17] through such services. In accordance with the Railway Labor Act, Title 45 U.S.C.A. § 155, the mediator endeavored to induce the parties to submit their controversy to arbitration. The Central of Georgia Railway Company was agreeable to arbitration but Defendant Union refused to submit the matter to arbitration.

24

Now the Defendants will not agree to leave the matter in status quo pending a decision of the controversy by

the National Railroad Adjustment Board, although at the instance of said Defendants the Supreme Court of Georgia held that said Board is the proper forum to decide the controversy. While the submission of this question is pending before the National Railroad Adjustment Board as a result of the position taken by the Defendants in the State Court proceeding, the Defendants have called a system-wide strike against the Central of Georgia Railway Company to compel and coerce said Company to adopt the Defendants' alleged interpretation of said Arbitration Award, which interpretation would permit a reopening of this issue and a negotiation of a rule thereon.

25

If said strike becomes effective, it will completely close down the operations of the Central of Georgia Railway Company. This will result in a complete cessation of freight and passenger service by the Central of Georgia Railway Company to the vital area which it serves. Said strike will also greatly impede, if not completely stop, the movement of valuable commodities in intra and interstate commerce in the area served and areas beyond. [fol. 18] The Central will not be able to move shipments of property for the defense of the United States, which movement could be vital to the national security of our nation.

26

Said strike will result in irreparable financial loss to the Central of Georgia Railway Company. It will divert patrons of the Central to its competitors, a damage which is incapable of measure. It will result in damages to the Central in many other ways which cannot be compensated for through a money judgment or calculated in terms of money. It will result in irreparable injury to the general public, to the shippers and passengers served by the Central and to the nation at large.

27

There is no adequate remedy prescribed by any law, including the Railway Labor Act, whereby this relief can

be granted by either the National Mediation Board, the National Railroad Adjustment Board or any other administrative body. The Courts are the only bodies which have the injunctive powers necessary to maintain the status quo in this case. The jurisdiction of the Court of equity is required. The Central of Georgia Railway Company has no adequate remedy at law.

28

The claims of the Defendants which they are seeking to enforce by strike are not of such relative value to them [fol. 19] as would justify the strike and the resultant irreparable injury to the Central of Georgia Railway Company and to the general public. The Defendants can await the outcome of the decision of the National Railroad Adjustment Board without suffering irreparable damages.

29

The only point that the Central of Georgia seeks to have decided by the National Railroad Adjustment Board and the only point in controversy in this case, is whether or not a certain arbitration award settled the controversy submitted to arbitration permanently or whether such controversy was subject to being renegotiated at the pleasure of the Union after a limited period of time. The controversy submitted to arbitration involves only the question of whether or not the defendant Trainmen employed by the Central of Georgia should be required as one of their basic duties for which they are compensated by their basic daily wage to couple and uncouple air, steam and signal hose. The position of the Union is that the award was temporary in nature and that a contract should be negotiated in which the trainmen are to be paid extra compensation for performing this duty, taking the position that this duty is not one of the basic duties of a railroad trainmen. The Central takes the position that the Cheney Award decided once and for all that the coupling and uncoupling of air, steam and signal hose is a basic duty of the trainmen and is compensated by the basic daily wage; and that the Union agreed to such arbitration . . . cannot now avoid the consequences of their contract.

30

[fol. 20] Nothing in the Central's original suit, its submission to the National Railroad Adjustment Board, nor in this instant petition seeks to hinder, impede, or prevent the defendant Union and its members from seeking higher wages, fringe benefits or any other demands that they might wish to make. The Central is not seeking to enjoin a strike on any of these points. The Central is merely seeking herein a restraining order of an equity Court of competent jurisdiction to enforce a contract and arbitration award and to protect the company and the general public from irreparable injury pending a determination of the legal effect of the aforesaid arbitration submission and award. This United States District Court, a forum of general equity jurisdiction, clothed with all equity powers, has jurisdiction to prevent irreparable injury by preserving the status quo through injunctive relief pending a determination of this controversy by the National Railroad Adjustment Board.

31

To do equity, plaintiff Company holds itself ready, without prejudice to its position, to keep such records and post such bond as may be prescribed by this Court pending a final determination hereof.

32

In the event that the National Railroad Adjustment Board declines to take jurisdiction of this controversy, or in the event that an erroneous award is entered by said Board, the continued jurisdiction of this contro-
[fol. 21] versy by this Court is requested in order that this matter may be finally determined and adjudicated.

Wherefore, Central of Georgia Railway Company, plaintiff herein, respectfully prays as follows:

1. This Court take jurisdiction of this controversy.
2. That process issue in terms of the law.
3. That a temporary restraining order issue, temporarily restraining and enjoining the named individual Defend-

ants, the Brotherhood of Railroad Trainmen, the Local Lodge No. 721 of the Brotherhood of Railroad Trainmen, and each member of the class represented herein, to-wit, each and every employee of the Central of Georgia Railway Company within the craft represented by the Brotherhood of Railroad Trainmen, from endeavoring to negotiate a cancellation, modification, change or revision of the award of Referee George Cheney, dated August 1, 1951, and from endeavoring to negotiate or from demanding a rule with the company prescribing extra compensation to Defendant class of employees for coupling and uncoupling air, steam or signal hose; and further, from calling a strike, work stoppage, either directly or indirectly, and from striking or consummating a work stoppage, either directly or indirectly, on the lines of the Central because of any feature of the controversy hereinbefore described which has been referred to the National Railroad Adjustment Board, or because the Company fails or refuses to acquiesce in Defendants' demands for a revision of the Cheney Award or a revision of the present labor contract so as to produce a special arbitrary payment for coupling and [fol. 22] uncoupling hose, in addition to their normal wage as compensation.

4. That this Honorable Court grant a preliminary injunction containing the same restraining provisions as prayed for in prayer number 3 above in the aforesaid temporary restraining order.

5. That the Brotherhood of Railroad Trainmen, an unincorporated association with its principal office and place of business in Cleveland, Ohio, doing business in this County and represented in this County by the officers of Local Lodge No. 731, Local Lodge No. 721, Brotherhood of Railroad Trainmen, with its principal office in Chatham County, Georgia, and Z. P. Logan, President, and W. A. Nealey, Secretary hereof, both residents of Chatham County, Georgia, L. E. Chester, a resident of Florida, individually and as Deputy President of the Brotherhood of Railroad Trainmen, B. G. Byington, W. B. English, and J. W. Shirley, all of whom are residents of Bibb County, Georgia, individually and as General Chairman, Vice Chairman and Secretary respectively, and J. G. Pardue, who is

a resident of Chatham County, Georgia, individually and as officers and members of the Grievance Committee of the Brotherhood of Railroad Trainmen on Central of Georgia Railway Company, be continuously restrained and enjoined from endeavoring to negotiate a cancellation, change, modification or revision of the Award of Referee George Cheney, dated August 1, 1951, and further restrained and enjoined from endeavoring to negotiate or from demanding a rule with the Company prescribing extra compensation to Defendant class of employees for coupling and uncoupling air, steam or signal hose; and further, [fol. 23] from calling a strike, work stoppage, either directly or indirectly, and from striking or consummating a work stoppage, either directly or indirectly, on the lines of the Central because of any feature of the controversy hereinbefore described which has been referred to the National Railroad Adjustment Board, or because the Company fails or refuses to acquiesce in Defendants' demands for a revision of the Cheney Award or a revision of the present labor contract so as to produce a special arbitrary payment for coupling and uncoupling hose, in addition to their normal wage as compensation, until the consideration of this controversy by the machinery of the National Railroad Adjustment Board has been exhausted in accordance with the provisions of the Railway Labor Act, and until this matter is finally determined, all pending further order of this Court.

6. That this Court retain jurisdiction of this cause pending the decision of the National Railroad Adjustment Board and the exhaustion of the administrative procedure prescribed in the Railway Labor Act for the purpose of adjudicating this controversy in the event the National Railroad Adjustment Board declines to take jurisdiction or enters an erroneous award; and for the purpose of granting any other and further relief required in the premises.

(S.) John B. Miller, Counsel for Plaintiff, Central of Georgia Railway Company.

P. O. Box 642, Savannah, Georgia.

[fol. 24] MAIN EXHIBIT "A"

IN THE SUPERIOR COURT OF CHATHAM COUNTY, GEORGIA, SEPTEMBER TERM 1954

No. ——

CENTRAL OF GEORGIA RAILWAY COMPANY,

vs.

BROTHERHOOD OF RAILROAD TRAINMEN; LOCAL LODGE No. 721 Brotherhood of Railroad Trainmen and Z. P. Logan, President and W. A. Nealey, Secretary thereof; L. E. Chester, Individually and as Deputy President of Brotherhood of Railroad Trainmen; B. G. Byington, W. B. English and J. W. Shirley, Individually and as General Chairman, Vice Chairman and Secretary respectively, and J. G. Pardue, Individually and as a member of the Grievance Committee of the Brotherhood of Railroad Trainmen on Central of Georgia Railway.

PETITION FOR DECLARATORY JUDGMENT AND INJUNCTION

The petition of Central of Georgia Railway Company respectfully shows:

1. Central of Georgia Railway Company, hereinafter called the "Railway Company", is a corporation chartered under the laws of Georgia, with its principal office and place of business in Chatham County, Georgia, and is a common carrier of freight and passengers.

2. Petitioner names as defendants herein the following: [fol. 25] (a) The Brotherhood of Railroad Trainmen, hereinafter called the "Brotherhood", which is an unincorporated association with its principal office and place of business in Cleveland, Ohio, but which has its Deputy President, L. E. Chester, presently within the jurisdiction of this Court.

(b) Local Lodge No. 721, Brotherhood of Railroad Trainmen, with its principal office in Chatham County, Georgia, and Z. P. Logan, President and W. A. Nealey, Secretary thereof, both residents of Chatham County, Georgia.

(c) L. E. Chester, a resident of Florida, individually and

as Deputy President of the Brotherhood of Railroad Trainmen.

(d) B. G. Byington, W. B. English and J. W. Shirley, all of whom are residents of Bibb County, Georgia, individually and as General Chairman, Vice Chairman and Secretary respectively, and J. G. Pardue, who is a resident of Chatham County, Georgia, individually and as a member of the Grievance Committee of the Brotherhood of Railroad Trainmen on Central of Georgia Railway.

3. The Brotherhood is the accredited bargaining agent for all of the trainmen employed by the Railway Company. It has a Grievance Committee and local Lodges on the lines of the Railway Company.

4. There are approximately 450 trainmen and yardmen employed by the Railway Company who reside in the States of Georgia, Alabama and Tennessee, and are members of the Brotherhood of Railroad Trainmen. All are [fol. 26] severally interested in the matters hereby presented to this Court for adjudication, and there is presented by this petition a common question of law and fact affecting their several rights and common relief is herein sought. The defendants named in Section 2(b), 2(c) and 2(d) above are, therefore, sued as representatives of the class consisting of all the trainmen and yardmen employed by the Railway Company who are members of the Brotherhood. Their selection as defendants will fairly insure the adequate representation of that class.

5. In 1950 all of the Class I Railroads of the United States, including Central of Georgia Railway Company, and all of the Operating Brotherhoods, including the Brotherhood of Railroad Trainmen, bargained for months over certain matters. They failed to reach an agreement. The Mediation Board was called in in accordance with the provisions of the Railway Labor Act, but failed to bring the disputants together or to persuade them to arbitrate. Thereupon, in accordance with the provisions of the Railway Labor Act, the President of the United States appointed an Emergency Board, which made its findings. The Brotherhoods declined to accept those findings and asked the President to take control of the railroads. On December 21, 1950, the railroads and Brotherhoods in-

volved in said dispute agreed upon a memorandum in which they set forth certain questions as to which they would continue to bargain. This memorandum includes, in Section 5, the words "Settle following Rules: * * * More than one class of service * * * air hose (Conductors and Trainmen)". On May 25, 1951, they reached an agreement covering wage increases, cost-of-living basis for wage [fol. 27] rate adjustments and rules changes applicable to road trainmen, yardmen, yardmasters, stewards, etc. and for a 5-day work-week and interim 6-day work-week applicable to yardmen and yardmasters, but did not agree upon the two questions just referred to, viz., "More than one class of service" and "Air hose (Conductors and Trainmen)". As to these two disputes they entered on the same date into a supplemental agreement, a copy of which is hereto attached marked Exhibit "A", under which the disputes with respect to coupling and uncoupling air, signal and steam hose, and with respect to more than one class of road service would be submitted to a Referee to be appointed by the President of the United States, and they also agreed that "the decision of the Referee shall be final and binding on the parties".

6. The President appointed as Referee George Cheney, Esquire, who held hearings, and on August 1, 1951 promulgated the following award with respect to the dispute involving coupling and uncoupling air, signal and steam hose:

> "A new rule should be drafted and inserted in the principal agreement between the parties to this proceeding dated May 25, 1951, which should read as follows: 'Rules, agreements, interpretations or practices which prohibit or restrict the use of yardmen to couple or uncouple air, steam and signal hose, shall be modified so that there will be no prohibitions or restrictions on yardmen performing such work and no payment therefor will be made but where rules, agreements, interpretations or practices require payment to yardmen under conditions stated therein for coupling or uncoupling air, steam and signal hose, such [fol. 28] rules, agreements, interpretations or prac-

tices shall be changed to provide for the payment of only 95 cents.

"'Individual carriers may elect to accept this rule or retain their present rules or practices without modification, by so notifying their General Chairman prior to September 1, 1951, and if accepted the date of such notification shall become the effective date' ".

In the same award he said, referring to both disputes:

"The Decisions and award of the undersigned Referee upon the two (2) issues appearing in the ancillary agreement dated May 25, 1951, and which was signed by the parties to this proceeding, shall be final and binding upon said parties, and the same shall become effective on the thirtieth day following the date the Referee notifies the Carrier and Employee Committee of his Decision and Award, and each Carrier shall make its election within such period, in accordance with the savings clause provisions of the proposed rules".

7. The award as to "More than one class of road service" is not here involved. The question involved in the dispute as to "coupling and uncoupling air, signal and steam hose" was whether or not the trainmen were to be given extra pay for coupling and uncoupling air, signal and steam hose. These were services which the members of the Brotherhood had been performing on Central of Georgia Railway Company's line without extra compensation for many years. As to this dispute, the Referee in effect ruled that there should be no prohibitions [fol. 29] or restrictions on the performance of this work by yardmen but that no payment for the work would be made except where rules, agreements, interpretations or practices already required payment for those services and in those cases the maximum payment should be only 95 cents. The Referee further provided that individual Carriers might elect to either accept his rule or retain their present rules or practices without modification by giving notice prior to September 1, 1951.

8. On August 16, 1951, the Railway Company notified

the Grievance Committee of the Brotherhood that the Central "desires to and will retain its present practices without modification with respect to Item (1) above", which is the item concerning coupling and uncoupling, and on September 1st the Chairman of the Grievance Committee and General Chairman, Defendant Byington, replied agreeing that no further handling of the matter was necessary and stating that the Brotherhood accepted the award. (Copies of these two letters are hereto attached marked Exhibits "B" and "C" respectively).

9. Notwithstanding the contractual agreement in the supplemental agreement of May 25, 1951 (Exhibit "A") that the decision of the Referee should be final and binding on the parties and notwithstanding the provision of the Referee's award to the same effect and notwithstanding the very great and valuable benefits which the members of the Brotherhood of Railroad Trainmen had secured under the agreement of May 25, 1951 providing for wage increases, cost-of-living basis for wage rate adjustments, rules changes, and 5-day work-week and an interim 6-day [fol. 30] work-week, the Brotherhood, on November 28, 1953, submitted to Central of Georgia Railway Company under the terms of the Railway Labor Act "and the current agreement" formal notice of their demand for $1.50 a day for coupling hose, notwithstanding the finding of the Referee, by which they were bound, that on railroads which, like the Central of Georgia, had no contract or practice providing for any such payment, no such payment should be made. The parties negotiated over this demand and were unable to agree. The Mediation Board was called in and on May 21, 1954 the Mediator reported that his efforts had been unsuccessful and requested arbitration under Section 5 First of the Railway Labor Act. Arbitration was rejected by the Brotherhood.

10. On May 25, 1954, the Railway Company received the following telegram from the Secretary of the National Mediation Board:

> "Following telegram received today from Brotherhood of Railroad Trainmen: Quote Have authorized train and yardmen withdrawn from service Central of Georgia Railway at 5:00 PM Friday May 28, 1954

unless matters in dispute satisfactorily adjusted prior to that time Unquote. Please wire statement."

11. The Railway Company contends that the award of the Referee declining to allow additional pay to the members of the Brotherhood for coupling hose was a final award binding on both parties, and that the Brotherhood cannot now seek to avoid the consequences of that award, to which it agreed, by demanding that a rule on that subject, which has never been in the contract between the Rail- [fol. 31] way Company and the Brotherhoods and which would be contrary to and in direct violation of the award of the Referee, be now written into the contract. The defendant Brotherhood contends that the award of the Referee is no longer binding and final or is subject to change at the demand of the Brotherhood. If it is not resolved before 5:00 PM Friday, May 28th, 1954, the trainmen and yardmen employed on the Central of Georgia Railway Company will then strike.

12. The Railway Company has therefore filed this petition seeking a declaratory judgment defining the rights and duties of the parties under Referee Cheney's award, declaring that said award is final and binding and not subject to change, modification or negotiation at the demand of any party. Said declaratory judgment is required to direct the parties in their future negotiations. The Railway Company seeks a temporary restraining order to prevent the called strike pending an adjudication of this controversy, and seeks a permanent injunction to enforce said judgment and prevent irreparable injury.

Wherefore, waiving discovery, Petitioner prays:

1. That process issue in terms of the law.

2. That the named defendants individually; the Brotherhood of Railroad Trainmen; the local Lodge No. 721, Brotherhood of Railroad Trainmen; and each member of the class represented herein, to wit, each and every employee of the Central of Georgia Railway Company represented by the Brotherhood of Railroad Trainmen, be temporarily restrained and enjoined from endeavoring to

[fol. 32] negotiate a cancellation, modification, change or revision of the award of Referee George Cheney, dated August 1, 1951; and further from calling a strike or striking on the lines of the Central of Georgia Railway Company because of the Central of Georgia Railway Company's failure and refusal to acquiesce in their demands for a special arbitrary payment in addition to their normal wage as compensation for coupling and uncoupling air, signal and steam hose, or because the Central of Georgia Railway Company fails or refuses to negotiate a cancellation, modification, change or revision of the award of Referee George Cheney dated August 1, 1951; until further order of the Court.

3. That a Rule Nisi issue calling upon the defendants to show cause why the prayers of the petition should not be granted.

4. That this Honorable Court declare the rights and other legal relations of the parties to the controversy holding that the said award of Referee George Cheney, Esquire, dated August 1, 1951, is final and binding on the parties and is not subject to further negotiation, change, cancellation, modification or revision.

5. That the Brotherhood of Railroad Trainmen, the local Lodge No. 721, Brotherhood of Railroad Trainmen, and each member of the class represented herein, to wit, each and every employee of the Central of Georgia Railway Company represented by the Brotherhood of Railroad Trainmen, be permanently restrained and enjoined from endeavoring to negotiate a cancellation, change, modification or revision of the award of Referee George Cheney, dated August 1, 1951; and further from calling a strike or [fol. 33] striking on the lines of the Central of Georgia Railway Company because of the Central of Georgia Railway Company's failure and refusal to acquiesce in their demands for a special arbitrary payment in addition to their normal wage as compensation for coupling and uncoupling air, signal and steam hose, or because the Central of Georgia Railway Company fails or refuses to negotiate a cancellation, modification, change or revision of the award of Referee George Cheney, dated August 1, 1951.

6. For any other and further relief required in the premises.

(S.) A. R. Lawton, (A. R. Lawton), John B. Miller, (John B. Miller), Counsel for Central of Georgia Railway Company.

P. O. Box 527, Savannah, Georgia.

EXHIBIT "A"

"Exhibit B"

85026

Agreement

BRT Referee

This Agreement made this 25th day of May, 1951, by and between the participating carriers listed in Exhibits A, B, and C, made a part hereof, and represented by the Eastern Western and Southeastern Carriers' Conference [fol. 34] Committees, and the employees shown thereon and represented by the Brotherhood of Railroad Trainmen through their conference committee.

Witnesseth: This Agreement is supplemental to an agreement entered into this same date by the carriers and employees parties hereto with respect to wages and rules of road and yard service employees.

Article I:

The parties are in dispute with respect to the following:

(1) Coupling and uncoupling Air, Signal and Steam Hose.

The parties are agreed that the dispute as to this rule shall be submitted to a referee to be appointed by the President of the United States for decision.

(2) More than One Class of Road Service.

The parties are agreed that the dispute as to the wording of this rule shall be submitted to a referee to be

appointed by the President of the United States for decision.

Article 2:

The proceedings before the referee shall be commenced in Washington, D. C., on June 25, 1951.

Article 3:

The decision of the referee shall be final and binding on the parties, and shall become effective thirty (30) days [fol. 35] from the expiration of the date the referee notifies the carrier and employee committees of his decision, and each carrier shall make its election within such period in accordance with the saving clause provisions of the proposed rules.

Signed at Washington, D. C., this Twenty-Fifth day of May, 1951.

For the Participating Carriers Listed in Exhibit A: L. W. Horning, Chairman, Frank J. Goebel, H. E. Jones, J. W. Oram, E. B. Perry.

For the Participating Carriers listed in Exhibit B: D. P. Loomis, Chairman, M. C. Anderson, E. J. Connors, E. B. Herdman, S. C. Kirkpatrick, G. E. Mallery, T. Short, J. J. Sullivan.

For the Participating Carriers Listed in Exhibit C: W. S. Baker, Chairman, F. A. Burroughs, Jr., F. K. Day, Jr., C. A. McRee, C. R. Hood, Jr.

[fol. 36] For the Employees Represented by the Brotherhood of Railroad Trainmen: W. P. Kennedy, President, Brotherhood of Railroad Trainmen, W. E. B. Chase, Vice President, F. Aldrich, Member, Wage-Rules Committee, K. H. Jones, Member, Wage-Rules Committee, J. Anderson, Member, Wage-Rules Committee, L. A. Borden, Member, Wage-Rules Committee, L. E. Chester, Member, Wage-Rules Committee, W. E. Grady, Member, Wage-Rules Committee, C. J. Jennings, Member, Wage-Rules Committee, F. E. Kazmer, Member, Wage-Rules Committee, J. J. Klein, Member, Wage-Rules Committee, C. E. Roberts, Member, Wage-Rules Committee, H. F. Sites, Member, Wage-Rules Committee, B. L. Wedding, Member, Wage-Rules Committee.

EXHIBIT "B"

Aug. 16th, 1951.

Mr. B. G. Byington,
General Chairman, B. of R. T.,
Room 202 Professional Building,
Macon, Ga.

Dear Sir:

Referring to Referees Decision and Award of August 1st, 1951, upon the following matters,

(1) Coupling and uncoupling Air, Signal and Steam Hose

[fol. 37] And

(2) More than one class of Road Service.

In accordance with this decision and award you are hereby advised that the Central of Georgia Railway Company desires to and will retain its present practices without modification with respect to Item (1) above.

As to Item (2) above the said Railway Company desires to and will accept the rule as contained in the award of the Referee effective September 1st, 1951, and which includes questions and answers as to proper application of said rule by the referee.

Please acknowledge receipt of this letter.

Very truly yours, W. J. Collins, Asst. to Vice Pres. & General Manager.

[fol. 38] EXHIBIT "C"

B. G. Byington, Chairman, W. B. English, Vice Chairman,
J. W. Shirley, Secretary

Brotherhood of Railroad Trainmen, General Grievance Committee

Central of Georgia Railway, Room 202,
Professional Building, Macon, Georgia

September 1, 1951.

Mr. W. J. Collins, Assistant to Vice Pres. and
General Mgr.,
Central of Georgia Railway,
211 Terminal Building, Macon, Georgia.

Dear Sir:

With further reference to yours of August 6 relative to:

1. Coupling and uncoupling air, signal, and steam hose and,
2. More than one class of road service.

[fol. 39] Please be advised that your understanding as to any further handling not being necessary is correct, and there will be no need for any further handling as I now understand that the Cheney award is legal and we accept the decision of the Referee.

Yours very truly (S.) B. G. Byington, (B. G. Byington), General Chairman.

BGB/s.

Exhibit (not marked)

Chatham Superior Court, September Term, 1954

Declaratory Judgment and Injunction

Central of Georgia Railway Company,

vs.

Brotherhood of Railway Trainmen, et al.

Verification

Georgia,
Chatham County.

Comes Now W. J. Collins, Assistant to the Vice-President and General Manager, and Director of Personnel of the Central of Georgia Railway Company, who, first being duly sworn, deposes and says that the allegations of fact contained in the within and foregoing petition are true and correct.

(S.) W. J. Collins (W. J. Collins).

[fol. 40] Sworn to and subscribed before me this 26 day of May, 1954.

(S.) Catherine I. Papy, Notary Public, Chatham County, Georgia.

EXHIBIT (not marked)

CHATHAM SUPERIOR COURT, SEPTEMBER TERM, 1954

DECLARATORY JUDGMENT AND INJUNCTION

CENTRAL OF GEORGIA RAILWAY COMPANY,

VS.

BROTHERHOOD OF RAILWAY TRAINMEN, ET AL.

TEMPORARY RESTRAINING ORDER

Georgia,
Chatham County.

The within and foregoing petition having been presented, read and considered:

It is considered, ordered and adjudged that said Defendants be and are hereby temporarily restrained and enjoined from endeavoring to negotiate a cancellation, change, modification or revision of the award of Referee George Cheney, dated August 1, 1951, and further temporarily restrained and enjoined from calling a strike or striking on the lines of the Central of Georgia Railway Company until further order of this Court.

In Open Court, this 26th day of May, 1954.

(S.) B. B. Heery, J.S.C.C.C. Pro Hac Vice.

[fol. 41] EXHIBIT (not marked)

CHATHAM SUPERIOR COURT, SEPTEMBER TERM, 1954

DECLARATORY JUDGMENT AND INJUNCTION

CENTRAL OF GEORGIA RAILWAY COMPANY,

VS.

BROTHERHOOD OF RAILWAY TRAINMEN, ET AL.

RULE NISI

Georgia,
Chatham County.

The within and foregoing petition having been presented, read and considered;

It is considered, ordered and adjudged that the Defendants named therein be and are hereby ordered to show cause before the Judge of the Superior Court of Chatham County, Georgia, then and there presiding at ten o'clock A.M., on the 30th day of June, 1954, in the Court Room of said Court in said State and County why the prayers of the petition should not be granted.

So ordered this 26th day of May, 1954.

(S.) B. B. Heery, J.S.C.C.C. Pro Hac Vice.

[fol. 42] MAIN EXHIBIT B-1

85026

"EXHIBIT A"

MEMORANDUM OF AGREEMENT

Washington, D. C., December 21, 1950.

1. Establish 40 hour week for yardmen with increase of 23 cents effective October 1, 1950, and additional 2 cents effective January 1, 1951.

2. Set aside 40 hour week agreement until January 1, 1952, and establish 6 day work week for yardmen. Effective with the first payroll period after 30 days from the date of execution of the formal agreement, yardmen re-

quired by the carrier to work on 7th day to be paid overtime rates except engineers who shall receive straight time rates for the 7th day. This does not create guarantees where they do not now exist. On and after October 1, 1951, three months' notice to be given of desire to go on 40 hour week. Provide for consideration of availability of manpower and 4 cents per hour if and when the 40 hour week actually becomes effective.

3. Settle rules for 40 hour week and 6 day week.

4. Grant yard conductors and brakemen other rules such as daily earnings minimum, car retarder operators and footboard yardmasters as recommended by Emergency Board No. 81.

[fol. 43] 5. Settle following rules:

Initial Terminal Delay (Conductors and Trainmen).
Interdivisional Runs.
Pooling Cabooses (Conductors and Trainmen).
Reporting for Duty.
More Than One Class of Service.
Switching Limits.
Air Hose (Conductors and Trainmen).
Western Differential and Double Header and Tonnage Limitation (Conductors and Trainmen, all Territories).

6. Roadmen to receive 5 cents per hour increase effective October 1, 1950 and additional 5 cents per hour increase effective January 1, 1951.

7. Quarterly adjustment of wages on basis of cost of living index (1 point to equal 1c per hour. First adjustment April 1, 1951. Base to be 176).

8. Agreement embodying principles applicable to yardmasters to be entered into for benefit of yardmasters.

9. Effective October 1, 1950, the basic hours of dining car stewards shall be reduced from 225 to 205 hours per month; no penalty overtime to accrue until 240 hours have been worked, the hours between 205 and 240 to be paid for at the pro rata rate.

Effective February 1, 1951, overtime at time and one-half shall accrue after 220 hours have been worked. The basic monthly salary to be paid for the 205-hour month shall be the same as that now paid for the 225-hour month.

[fol. 44] Except that four dollars and ten cents ($4.10) shall be added to the present monthly rate effective January 1, 1951.

10. In consideration of above, this agreement to be effective until October 1, 1953, and thereafter until changed or modified under provisions of Railway Labor Act. Moratorium on proposals for changes in wages or rules until October 1, 1953, as follows:

No proposals for changes in rates of pay, rules or working conditions will be initiated or progressed by the employees against any carrier or by any carrier against its employees, parties hereto, within a period of three years from October 1, 1950, except such proposals for changes in rules or working conditions which may have been initiated prior to June 1, 1950. Provided, however, that if as the result of government wage stabilization policy, workers generally have been permitted to receive so-called annual improvement increases, the parties may meet with Doctor Steelman on or after July 1, 1952, to discuss whether or not further wage adjustments for employees covered by this agreement are justified, in addition to increases received under the cost of living formula. At the request of either party for such a meeting Doctor Steelman shall fix the time and place for such meeting. Doctor Steelman and the parties may secure information from the wage stabilization authorities or other government agencies. If the parties are unable to agree at such conferences whether or not further wage adjustments are justified they shall ask the President of the United States to appoint a referee who shall sit with them and consider all pertinent information, and decide promptly whether further [fol. 45] wage increases are justified and, if so, what such increases should be, and the effective date thereof. The carrier representatives shall have one vote, the employee representatives shall have one vote and the referee shall have one vote.**

** The foregoing will not debar management and committees on individual railroads from mutually agreeing upon changes in rates, rules and working conditions of employees covered by this agreement.

11. If the parties cannot agree on details of agreement or rules they shall be submitted to John R. Steelman for final decision.

The usual protections for arbitraries, miscellaneous rates, special allowances, and existing money differentials above existing standard daily rates will be included in the formal agreement.

J. P. Shields, Brotherhood of Locomotive Engineers by Grand Chief Engineer, D. B. Robertson, Brotherhood of Locomotive Firemen and Enginemen by President, R. O. Hughes, Order of Railway Conductors by President, W. P. Kennedy, Brotherhood of Railroad Trainmen by President, L. W. Horning, Chairman, Eastern Carriers' [fol. 46] Conference Comm., D. P. Loomis, Chairman, Western Carriers' Conference Comm., C. D. MacKay, Chairman, Southeastern Carriers' Conference Committee.

NOTE RE EXHIBIT

Exhibit "B"—Supplemental Agreement by the carriers and employees with respect to wages and rules etc., dated 5/25/51 (Same as Exhibit "A"); Omitted from the Printed Record, being heretofore copied at page 33.

MAIN EXHIBIT "C"

Mr. J. M. MacLeod, Executive Secretary,
National Railroad Adjustment Board,
First Division,
Chicago, Illinois.

Brotherhood of Railroad Trainmen

Central of Georgia Railway Company

Statement of Claim:

It is the claim of the Central of Georgia Railway Company that Referee George Cheney's Award (Exhibit "A") released at Washington, D. C., August 1, 1951 was a final

and binding disposition of the controversy which has existed for many years over the propriety of the performance of the air hose coupling function by yardmen rep- [fol. 47] resented by the Brotherhood of Railroad Trainmen, and that the award is not subject to change, cancellation, revision or modification at the demand of the Brotherhood.

Carrier's Statement of Facts:

This presentation to the First Division of the National Railroad Adjustment Board is the culmination of a series of Court actions in which the Central of Georgia Railway Company has requested the Courts to interpret the meaning of the phrase "final and binding" as it appears in the agreement of May 25, 1951, shown as Exhibit "B", and as it appears in Referee George Cheney's award shown as Exhibit "A". The developments which brought this proceeding into being will be described chronologically.

The earliest record of this controversy being handled officially to the highest officer of this carrier designated to handle claims and grievances indicates that the Brotherhood of Railroad Trainmen first presented under date of August 2, 1943 the complaint of Atlanta yardmen being required to couple air on cuts of cars leaving Industry Yard. (See Exhibit "C".) Their claim that such work "was not in line with their duties" was denied in conference September 30, 1943 and the practice continued.

The question lay dormant until November 17, 1947 when the Brotherhood requested that the switchmen at Macon be relieved of coupling and uncoupling air hose. (See Exhibit "D".) In the meantime, two time tickets, dated November 16, and 17, 1947, were presented in behalf of a switch engine crew for an additional day's pay with the [fol. 48] following notation in the remarks column:

> "This day claimed account coupling air hose on 12 cars for swamp and 10 cars in 401. This is car inspector's work."

This claim was denied at the local level, but it was not progressed to the highest officer of the carrier nor further appealed.

Later, on July 25, 1949, we received four claims all dated July 14, 1949 from the General Chairman of the Brotherhood of Railroad Trainmen claiming an additional yard day "for having to couple air hose in Macon Yard."

These claims were progressed to the highest officer and declined, but they were not appealed further.

Nothing further was heard until September 16, 1949 when the General Chairman of the Order of Railway Conductors and the Brotherhood of Railroad Trainmen requested a conference to negotiate a rule covering the coupling of air hose. (See Exhibit "E"). We continued to receive spasmodically claims from switch engine crews, a few of which claimed 2 hours pro rata with the following notation in the remarks column:

> "Claiming 2 hrs. pro-rata time account of coupling air hose while working Roosevelt Ave. This ticket to run continuously until maximum settlement is reached account of having to couple and uncouple air hose switching Roosevelt Avenue, across street crossings, [fol. 49] and working industries up and down grades. Also coupling and uncoupling air hose while working passenger trains in passenger terminal."

None of the claims were progressed, and the General Chairmen of the Conductors and Trainmen were advised in conference that their request for a new rule was declined, and the issue became involved as a carrier counter-proposal in the so-called 1949 National Wage and Rule movement sponsored by the Conductors and Trainmen. Nothing developed as a result of many months of handling by the several conference committees representing the employees and the carriers, but finally an agreement was reached and signed with the Brotherhood of Railroad Trainmen on May 25, 1951 (See Exhibit "B") to submit the question (Coupling and Uncoupling Air, Signal and Steam Hose) to a neutral referee to be appointed by the President of the United States for decision, and that the decision of the referee shall be final and binding on the parties.

The referee's Decision and Award best explains the proceeding from that point until his decision was rendered and released. Upon receipt of the Decision and Award, we

wrote the general chairman of the Brotherhood of Railroad Trainmen, on August 16th, in accepting the Cheney Decision and Award that we elected to retain our present practices without modification (See Exhibit "F").

The general chairman acknowledged receipt of this letter (Exhibit "G") by his letter of August 20, 1951, in which he implied that further handling was to be given the matter, and we advised him that it was "our position no further handling was necessary since, under the agreement [fol. 50] to arbitrate, it was definitely and positively provided that the award of the referee or arbitrator should be final and binding on both parties and that such award as was rendered shall become effective and a part of the May 25, 1951 agreement. Therefore, under these circumstances, it is not my understanding that there is any further handling to be given but that the rules became effective September 1, 1951."

The general chairman replied under date of September 1, 1951 (Exhibit "H") that the company's understanding was correct and "There will be no need for any further handling as I now understand that the Cheney Award is legal and we accept the decision of the referee". (Emphasis ours). Under date of September 5, 1951 (Exhibit "I") all division superintendents were advised that the air hose coupling controversy had been settled and that we were to make no changes in our policy which was one of ancient standing. Following the Cheney Award, we neither expanded nor retracted our practice of requiring yardmen to couple or uncouple air hose. There the matter stood until November 28, 1953.

On November 28, 1953 the Brotherhood of Railroad Trainmen served notice on the Central of Georgia for ten proposed rule changes, item nine of which read as follows:

> "Amendment to Article 41.
>
> Coupling and Uncoupling of Air and/or Steam Hose, etc.
>
> [fol. 51] "Foremen and Switchmen employed in yards, and trainmen employed on switch local assignments and/or local freight assignments will be paid

an arbitrary of $1.50 per day or trip regardless of miles or hours involved in the day or trip.

"As a condition of this arbitrary allowance, said employees may be required to couple and/or uncouple air brakes, signal and steam hose; couple or uncouple vestibule curtains."

Lengthy discussions with the General Committee of the Brotherhood followed during the next six months, during which we took the position that the air hose coupling controversy was disposed of by arbitration, and that both the articles of agreement and the neutral referee's decision and award specified that the decision and award was final and binding on the parties, and we declined to grant the request for a rule.

Subsequently, the good offices of the National Mediation Board were sought by the Brotherhood, and Mr. Robert F. Cole was assigned as mediator, with the result that under the threat of strike which was to have commenced at 5:00 P.M. Friday, May 28, 1954, all of the issues in the November 28, 1953 notice were disposed of to the satisfaction of the Brotherhood except item nine, the request for an arbitrary payment for coupling air hose.

The dispute involving the air hose issue was carried into Superior Court of Chatham County, Georgia by the company, in which the Court was asked to interpret the meaning of the words "final and binding" as used in this case. The Brotherhood was temporarily enjoined [fol. 52] from striking, pending the outcome of the Court's decision. In answer to our suit, counsel for the Brotherhood, in their general demurrer, challenged the jurisdiction of the Court and averred the matter was one coming under the jurisdiction of the National Railroad Adjustment Board. The trial Judge overruled the demurrer and took jurisdiction. The decision of the trial Judge was appealed to the State Supreme Court by the company, and the Supreme Court decided that the trial Judge had erred in taking jurisdiction, (See Exhibit "J") and, therefore, the question raised in this dispute with the Brotherhood should be referred to this Board for adjudication.

Statement of Carrier's Position

It is the position of the company that the Decision and Award of Referee George Cheney was a final and binding disposition of the issue, and that the award is not subject to change, cancellation, modification or revision except at the pleasure of the company. This is not to say that the rule requested by the Brotherhood is forever barred from consideration by the company or that the Cheney Award prohibits the making of such an agreement, but it is to say that when an issue is arbitrated under a common law agreement between two parties such as we have here, the decision and award of the arbitrator shall only be altered at the pleasure of the party winning the advantage. No such privilege accrues to the party adversely affected, and we contend it is not proper for the Brotherhood to put the Cheney Award in the category of the general schedule or the provisions of the principal agreement of May 25, 1951, which were subject to a moratorium clause providing [fol. 53] that neither party would serve notice upon the other for a change in rules, wages or working conditions before October 1, 1953.

Referee George Cheney emphasized the consequences of arbitration on page 7 of his decision:

> "Before embracing the present controversy, the Referee further emphasized to both parties that each can only achieve victory on a controversial subject, when they resolve their disagreements by means of collective bargaining. Inherent in the resolution of any controversy by arbitration, is the distasteful circumstance that the position of one adversary must prevail over the position taken by his opponent. Under the latter procedure, it is hardly to be anticipated that even the decision of a non partisan individual such as the present Referee, will be palatable or convincing to the loser."

The moratorium clause in the agreement of May 25, 1951 was not incorporated by reference or otherwise in the referee agreement (Exhibit "B"), made the same date, by means of which latter agreement the parties referred

the air hose dispute to a referee to be appointed by the President of the United States. Instead, the parties expressly provided that the decision of the referee should be final and binding.

The award of Referee Cheney, rendered on August 1, 1951, disposed of a problem which had long plagued the railroad industry generally (this carrier since 1943) and certainly a fair reading of the entire award leaves no doubt that whatever disposition was thus made of the air hose dispute, it was intended to settle the question once and for all.

[fol. 54] Beginning at page 20 of the award, Referee Cheney said:

> "It will be instructive to analyze the Carriers' proposal, and ascertain what changes it will accomplish, if adopted. One of the principal purposes of this proposal appears to be, to put an end to the controversy which has existed for years over the propriety of the performance of the Coupling Function, by members of the Brotherhood of Railroad Trainmen. Such an intention is evident from the first clause of the proposal, reading as follows:
>
> "Rules, agreements, interpretations or practices which prohibit or restrict the use of yardmen to couple or uncouple air, steam and signal hose, shall be modified so that there will be no prohibitions or restrictions on yardmen performing such work * * *."
>
> "It further appears to this Referee, that the next clause conditionally preserves rather than destroys existing rules, agreements, interpretations and practices currently providing payments (arbitraries), for the performance of the Coupling Function by yardmen but with the qualification that a reasonable uniform ceiling payment be fixed therefor by the referee, which ceiling shall also constitute a minimum floor payment for such work."

continuing to quote

> "The Carriers' proposal also probably is intended to prevent further future extension of the penalty

payments for the performance of this function, through interpretation or construction of existing or future [fol. 55] rules on this subject, unless arbitraries are created therein by clear, express, and unambiguous language."

"As already observed, the last paragraph of the Carriers' proposal unquestionably will enable any individual Carrier if it so desires, to retain its present rule on this subject, in preference to any rule that may be drafted and made effective by the Referee through this Award."

We cannot interpret the May 25, 1951 agreement without being certain that the intent of the parties as expressed therein was to make the arbitration award final and binding on the coupling function, and not subject to the moratorium clause of the principal agreement. That intent is made clear not only by the Referee's award but also by the ancillary agreement. The referee definitely stated: "One of the principal purposes of this award (and also the awarded rule) appears to be, to put an end to the controversy which has existed for many years." This statement cannot be reconciled with the attempt of the organization in this case to vacate the decision and award. The proceeding before Referee Cheney was not an arbitration under the Railway Labor Act. There was neither three nor six arbitrators on the board as prescribed in Section 7, First; the agreement was not drawn up in accordance with Section 8; and the award was not filed in the United States District Court, with the Mediation Board, and the Interstate Commerce Commission as stipulated in Section 7, Third (f). It is plain that this was common-law arbitration and hinges purely and simply on the matter of agency.

[fol. 56] Were the conference committees representing the carriers and the employees proper agents? If they were, and there is no question that they were, did they have a right to submit this question to arbitration? There is no doubt that they were proper agents and there is no question that they had a right to submit the question to arbitration.

Referee Cheney said in his award, (p. 26) "Resolution of this dispute by collective bargaining rather than by arbitration, is precisely what the Referee suggested, but, within twenty-four hours after this suggestion was made, the Referee was informed by a representative of the Brotherhood of Railroad Trainmen, that neither party believed the coupling function issue . . . could be resolved by further collective bargaining among the interested parties. . . . Upon such a state of the record, the Referee must conclude, that it would be expecting the improbable if not the impossible, to assume that further collective bargaining in foreseeable future, would be productive of a final, complete, and nation-wide determination of the Coupling Function dispute."

Surely, therefore, there can be no doubt in the minds of reasonable men that the parties to the proceeding and the referee himslf intended that his decision and award was a final, conclusive settlement of the issue which had kept the parties apart for so long. Certainly there must be some finality to a proceeding of this nature. The clearly expressed intent of all who had any part in this proceeding was to dispose of the subject. Of what use is an arbitration proceeding if immediately after we get an award a thirty day notice can be served under the Railway Labor [fol. 57] Act to set aside an award which was not to be limited to any specific period of time or subject to any express cancellation clause, but instead was to be final and binding. This carrier did not have the slightest inkling of an idea what sort of a rule might have been promulgated by the Carriers' Conference Committees meeting with the employees' representatives, or what kind of a rule Referee Cheney would decide on when the carriers' representative agreed to arbitration, but one can only imagine the position the Brotherhood would be taking now if the award had been more advantageous to it and the carrier was in the position now occupied by the Brotherhood.

This was not a matter of wages. We are fully aware that the position of the carrier would be unsound if the issue had involved the matter of wages in the labor contract. The parties' contentions and the Referee's find-

ings show that the issue was one of job responsibility and not wages. Why is this important? The wage contract is always subject to re-negotiation as provided in the termination clause, but the issue of job responsibility is subject to finality of adjudication.

If the parties had not meant to settle the issue once and for all, why didn't they say so. Why did they use the language "final and binding"? and what is the meaning of such language?

Webster's International Dictionary, 1945 Unabridged, describes "final" as meaning:

> (1) Pertaining to, or occurring at, the end of conclusion; last, terminating, ultimate; as, the final day of a school term.
>
> [fol. 58] (2) Conclusive, decisive, definitive; as a final judgment.
>
> (3) Respecting an end or an object to be gained; related to the purpose or ultimate end in view.
>
> (6) Of an order, decision, judgment, decree, or sentence of a Court, designating: (a) usually, one which ends the action or proceeding in the Court that makes it, leaving nothing further to be determined by the Court, or to be done except the administrative execution of the decision, judgment, etc. Such a judgment does not as such preclude an appeal. It is distinguished from an interlocutory decision, judgment, etc. (b) One which is conclusive as to jurisdiction, and precludes the right to appeal to, or continue the case in, any other Court upon the merits; as, in some minor matters the decisions of the lower Courts are usually made final. This does not preclude the right to take exception to the proceeding as invalid or to take proceedings to set it aside for irregularity, fraud, or mistake. In this sense, final and conclusive is more often used. (c) With reference to the judgments or decrees of the Supreme Court of the United States rendered under the provisions of the statutes giving it jurisdiction over appeals and writs of error, a judgment which terminates the litigation between the parties on the merits, leaving nothing for the inferior

Court to do in case of an affirmance except to execute the judgment or decree.

The Railway Labor Act, itself, Title 45, U.S.C.A., Section 153(m) uses the term "final and binding" in the same sense as used in the Award. It says that decisions of the National Railroad Adjustment Board shall be "final and binding".

[fol. 59] Except for money awards, the Courts hold that "final and binding" means the awards of the National Railroad Adjustment Board are not even subject to judicial review. This shows what "final and binding" means in Railway Labor disputes!

It is not necessary to elaborate on the meaning of the word binding. Surely no one questions or doubts the meaning or intent of the parties in using the word in connection with this dispute. What is now at issue is the finality of the bond made by Referee Cheney.

Finally, what is the status of an award conceived in common law arbitration? Below we cite pertinent legal authorities:

> "An Award must be final as to all matters submitted so that the rights and obligations of the parties are definitely adjusted and fixed.
>
> "Since the object of submitting to arbitration is to obtain such a settlement as will put an end to the dispute and conclude the matters submitted, it is a fundamental rule that an award to be valid must be final and give the parties repose and quiet with respect to all matters submitted. This is true whether the arbitration be a common law or a statutory one."

6 C.J.S. 227, Arbitration and Award Sec. 81a (5).

> "An award, ordinarily, concludes and binds the parties as to the merits of all matters, properly within the scope of the award, and intended by the arbitrators to be finally decided."

[fol. 60] 6 C.J.S. 240, Arbitration and Award Sec. 95.

> "A common law award is binding and conclusive on the parties and their privies."

Rich vs. Turnbull 95 Ga. 752.

> "In an agreement for common law arbitration, such as is recognized in that State (Code Sec. 7-101, et. seq.) the ordinary elements of a valid contract must appear, including an agreement to arbitrate some specific thing, and an agreement to abide by the award, either in express language or in implied consent to do so, as where the dispute is submitted to an arbitrator for final determination and he makes an award accordingly."

Cliett v. Metropolitan Life Inc. Co. 195 Ga. 257, at 265.

> "Awards are to be favored by the Courts, as they are designed to terminate controversies, and they should be sustained when made in conformity to law, unless vicious or defective for some manifest cause, properly made known to the Court."

Culbreth vs. Smith 202 Ga. 102.

> "An arbitration award may be attacked only for fraud, mistake of law, or reference by arbitrator to chance or lot."

Brand vs. Sorrells 61 Ga. 162.

> "An award of arbitrators reduced in writing in plain, unambiguous terms, in the absence of fraud or [fol. 61] mistake, cannot afterwards be shown by the arbitrators themselves, or by parol evidence, to mean other than what is expressed upon its face."

Cobb & Duncan vs. Dortch 52 Ga. 548.

It is clear, therefore, that the issue was submitted to common law arbitration by responsible, well-meaning parties whose agreement evidenced clear intent and desire to achieve finality. This arbitration was not an arbitration under the Railway Labor Act. There is, however, no law that prevents an award under the Railway Labor Act from permanently settling an issue. The Act merely directs that the award specify its duration whether or not permanent.

The rights and relations of the parties under common law arbitration are unmistakably clear, and we urge this board to hold with the carrier and find that the so-called Cheney Award (Exhibit "A") was a final and binding disposition of a dispute involving job responsibility, and is not subject to change, cancellation, revision or modification except at the pleasure of the Carrier.

Oral hearing is requested.

All data herein has been shown to the committee and they are being furnished copies of this submission.

Central of Georgia Railway Company, Director of Personnel.

Savannah, Georgia, January 17, 1955. tp-b.

[fol. 62] EXHIBIT "A"

In the Matter of a Controversy

between

Brotherhood of Railroad Trainmen,

and

Certain Participating Eastern, Western and Southeastern Railroad Carriers of the United States

Referee's Decision and Award

APPEARANCES:

Mr. L. W. Horning, Representing, Eastern Carriers Conference Committee.

Mr. D. P. Loomis, Representing, Western Carriers Conference Committee.

Mr. W. S. Baker, Representing, Southeastern Carriers Conference Committee.

Mr. W. L. Reed, Mr. Henry Kaiser, Esq., Mr. H. F. Sites, Mr. K. H. Jones, Mr. C. J. Jenkins, Mr. W. E. Grady, Mr. W. T. Jenkins, Mr. E. J. Brady, Mr. C. W. Stanley, and Mr. Harry See, Representing, Brotherhood of Railroad Trainmen.

The present action is a Reference Proceeding, in the nature of an arbitration between certain Participating

[fol. 63] Railroad Carriers and the Brotherhood of Railroad Trainmen. The developments which brought this proceeding into being will be first described.

Developments, Producing the Present Reference Proceeding.

During the month of February, 1949, representatives of the Brotherhood of Railroad Trainmen adopted certain proposals to change the terms of their Collective Bargaining Agreements with the Carriers, relating to wages, hours of work, and the other conditions of employment customarily embodied in the "Rules". Brotherhood notices were served upon the Carriers March 15, 1949, and in turn the Class I Carriers served counter proposals for certain Rule change on the Brotherhood as of March 20, 1949. Bargaining on these subjects began September 22, 1949, but unfortunately became deadlocked December 14, 1949. The good offices of the National Mediation Board were then requested, and mediation by this agency was begun January 16, 1950. The efforts of the National Mediation Board however did not produce a final and complete settlement of all matters in controversy, at that time.

On February 24, 1950, President Truman proclaimed the existence of an emergency resulting from the controversy heretofore described and appointed an Emergency Board pursuant to Section 10 of the Railway Labor Act, to investigate the same. This Emergency Board convened in Chicago March 2, 1950, and began receiving testimony and arguments from the interested parties. Two extensions of time were granted this Board by stipulation be-[fol. 64] tween the interested parties, and voluminous testimony, numerous documentary exhibits, and elaborate briefs were received in evidence. After carefully considering the proof submitted to it, this Emergency Board made its Report to President Truman on June 15, 1950.

On July 11, 1950, the Brotherhood of Railroad Trainmen wired President Truman that it would not accept the Emergency Board's recommendations. Thereafter on August 4, 1950, the Brotherhood of Railroad Trainmen asked President Truman to take over the railroads, whereupon conferences were begun under the auspices of the White House, and with the good offices of Dr. John R.

Steelman acting mediator on behalf of President Truman. Settlement negotiations continued intermittently at The White House level under the direction of Dr. John R. Steelman on all matters in controversy between August 4, 1950, and December 21, 1950. On this last named date with the assistance of Dr. John R. Steelman, the parties signed a Memorandum of Agreement at The White House in Washington, D. C., a copy of which is hereto attached, marked Exhibit "A", and incorporated in this Award by reference.

Following the signing of this Memorandum of December 21, 1950, the Carriers and the Brotherhood of Railroad Trainmen conferred and prepared a new Collective Bargaining Agreement embodying a final settlement of all controversies relating to wages, hours of labor, and Rule changes. The wage settlement alone resulted in Yard Service Employees represented by members of the Brotherhood of Railroad Trainmen receiving an increase of approximately $2.84 in their Basic Daily Rates of Pay. In this [fol. 65] connection it should be emphasized, that this new Collective Bargaining Agreement contains job classifications with minimum basic daily rates of pay thereto attached, but this instrument does not contain an exhaustive, or all inclusive schedule of occupational descriptions, of the tasks and duties performed by the several classifications of labor represented by the Brotherhood of Railroad Trainmen.[1] The new Collective Bargaining Agreement also contains a reference at pages 17 and 18, to the particular matters presently before the undersigned Referee.[2]

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[1] See: Collective Bargaining Agreement dated May 25, 1951, identified as Carriers' Exhibit 3.

[2] On pages 17 and 18 of Carriers' Exhibit 3 the following excerpts pertinent to the present Reference Proceeding appear:

"Article 8—Coupling and Uncoupling Air, Signal and Steam Hose "(Subject to separate agreement made May 25, 1951.)"

"Article 9—More Than One Class of Road Service.

"(Subject to separate agreement made May 25, 1951.)"

Pursuant to and contemporaneous with the execution of their new Collective Bargaining Agreement identified as Carriers' Exhibit 3, the parties to this Reference Proceeding signed an Ancillary Agreement, a copy of which is likewise hereto attached, marked Exhibit "B", and incorporated in this Award by reference. In substance, words, and effect it declares:

> "The parties are in dispute with respect to the following:
>
> "(1) Coupling and Uncoupling Air, Signal and Steam Hose.
>
> [fol. 66] "The parties are agreed that the dispute as to this rule shall be submitted to a referee to be appointed by the President of the United States for Decision.
>
> "(2) More Than One Class or Road Service.
>
> "The parties are agreed that the dispute as to the wording of this rule shall be submitted to a referee to be appointed by the President of the United States for Decision."

Following the signing of the principal and ancillary labor agreements just referred to, President Harry S. Truman appointed the undersigned as Referee of both controversies described in Exhibit "B". This appointment is memorialized in a letter transmitted to said Referee, reading as follows:

"The White House

Washington June 8, 1951.

"Dear Mr. Cheney:

"In accordance with the Agreement of May 25, 1951, between the Eastern, Western and Southeastern Carriers' Conference Committees and the employees represented by the Brotherhood of Railroad Trainmen, you are hereby appointed as referee to determine the two issues specified in that Agreement. A copy of the Agreement is attached for your information. I appreciate your willingness to assume this responsibility.

Very sincerely yours, (S.) Harry S. Truman.

Mr. George Cheney, Collective Bargaining Service, 641 Spreckels Building, San Diego 1, California."

[fol. 67] In compliance with the ancillary agreement between the Carriers and the Brotherhood of Railroad Trainmen; and following prior notice to said parties, and an agreement between them that the undersigned was acceptable as the Referee, informal hearings on the two issues offered in this instrument were begun at the Statler Hotel in Washington, D. C., on June 25, 1951. These hearings were continued from day to day and hour to hour thereafter, until all interested parties had been fully heard, both orally and on briefs.

Attention should also be invited to certain observations made by the Referee, at the close of the oral hearings. No attempt was made to hastily embrace the two unresolved controversies, or to determine them through or by means of an Arbitration Award. On the contrary, the Referee suggested that the Brotherhood of Railroad Trainmen and the Carriers convene such bargaining representatives as might be required for further collective bargaining among all interested and affected parties, and that a further effort be made to finally resolve the two matters still in dispute, by means of collective bargaining rather than by means of an Arbitration Award. The Referee declared during such proposed collective bargaining negotiations, that he would positively withhold making any Decision or Award on either issue. After having this suggestion under advisement for a period of approximately twenty-four (24) hours, a representative of the Brotherhood of Railroad Trainmen informed the Referee that neither party believed the matters remaining in dispute could be resolved by further collective bargaining among them, and that both parties were requesting the Referee to proceed with an analysis of the evidence, and the preparation and re-

[fol. 68] lease of the Decision and Award. It should be added parenthetically, that the analysis of the evidence and the preparation and release of the present Award, covered substantially an additional period of thirty (30) days following the conclusion of the oral hearings. During this thirty day period, insofar as this Referee has been in-

formed, none of the affected Carriers and the Brotherhood of Railroad Trainmen have attempted to resolve any of all of the matters remaining in dispute on any property, by further collective bargaining.

Before embracing the present controversy, the Referee further emphasized to both parties that each can only achieve victory on a controversial subject, when they resolve their disagreements by means of collective bargaining. Inherent in the resolution of any controversy by arbitration, is the distasteful circumstance that the position of one adversary must prevail over the position taken by his opponent. Under the latter procedure, it is hardly to be anticipated that even the decision of a non partisan individual such as the present Referee, will be palatable or convincing to the loser. Bearing this in mind, both controversies will be approached from a strictly non partisan perspective, and the Award as to each will be founded on principles of practicability and ordinary common sense, and upon the equities of the contestants as established by a preponderance of the evidence, with an absence of concern as to whether the awards are palatable or unpalatable. Accordingly, the Referee believes that the following decisions on the two questions submitted for his decision, constitute a fair, reasonable, practicable, and equitable settlement of each dispute.

[fol. 69] Frame of Reference for the Coupling Function Dispute.

The first issue appearing in Exhibit "B" relates to coupling and uncoupling of air, signal and steam hose, commonly referred to in the jargon of railroad men as, "tying up or untying the air". For purposes of brevity, this subject will be hereinafter referred to as the "Coupling Function."

It cannot be overemphasized that the statement of this issue places no limitations or restrictions upon the Referee. He is both empowered and obliged by the very language of the issue to exercise an unbridled discretion in drafting a new Rule relative to the Coupling Function. The frame of reference under which this issue is submitted, does not require the Referee to interpret, or to be bound by any pre-

vious contracts, contractual provisions, or understanding agreed to by any Carrier and any Labor Organization. Neither does the frame of reference require the Referee to accept as conclusive of his determination, any previous finding, decision, or ruling by any administrative agency or arbitrator, whether governmental or private. In view of the obvious latitude extended the Referee relative to the coupling dispute, he manifestly must re-examine all facets of this problem, starting from its inception about the year 1887. We should not assume that any previous practice, rule, or manner of treating this problem is either correct, or incorrect, or desirable, or undesirable, in the light of modern conditions and industrial relationships. The statement of the issue, contemplates a review and examination de nova, of the vexatious and baffling coupling problem which for about two-thirds of a century, has confronted both the [fol. 70] Brotherhoods and the Carriers. Therefore, the studied purpose and intention of this Referee will be, the exercise of a wise discretion in drafting a new rule relative to the Coupling Function, which will be based upon practical considerations, common sense, and the equities of the situation as established by a preponderance of the evidence.

Nature of the Coupling Function.

Furthermore, the Coupling Function has always been an altogether simple process, requiring at most only a few minutes times for its performance even under difficult circumstances. Only an inconsiderable amount of skill and physical labor is involved in its performance. It is however attended by some greater or less risk of bodily injury or death, because the function must be performed in many instances by getting in between two stationary cars of a train to which a locomotive is physically attached.[3] When the Coupling Function is performed by passenger trainmen it also sometimes occasions soiling their uniforms, which they are required to keep clean.[4]

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[3] See: Brotherhood Exhibits "F" and "F-1", demonstrating that annually, about one trainman is killed while performing the Coupling Function on all American Railroads, during the working of 172 million man hours by about 202,000 trainmen.

[4] See: Carriers' Exhibit 5, page 8.

Basic Day Pay Provisions In the Labor Agreement.

The master labor contract between the Brotherhood of Railroad Trainmen and the Carriers, does now, and always has contained a Basic Daily Pay Rate for enumerated [fol. 71] classifications of labor, but this contract does not now, and never has embraced a schedule of job descriptions, enumerating and particularly specifying all of the various tasks performed by each class of Brotherhood or Railroad Trainmen Labor, for which Daily Rates of Pay are fixed on a basic eight (8) hour tour of service. Consequently, this labor contract does not expressly state whether the Coupling Function constitutes, or does not constitute, a part of the occupational tasks embraced within Brotherhood of Railroad Trainmen work. Custom and practice over the years, is the only industrial relations metric for determining what is, or is not, an occupational task properly embraced within Brotherhood of Railroad Trainmen work.

To illustrate, one of the Chicago area agreements contained occupational descriptions of some of the tasks customarily performed by and recognized as Brotherhood of Railroad Trainmen work. These occupational descriptions read as follows:

> "(a) The following shall be considered yard work, shall be handled by yardmen and shall be compensated for at not less than yard rates.
>
> "(b) The switching of all freight and passenger equipment operating exclusively within the switching limits;
>
> "(c) The transfer of all freight and passenger equipment operating exclusively within the switching lim-ts;
>
> [fol. 72] "(d) The handling of all construction and maintenance of way trains operating exclusively within the switching limits;
>
> "(e) The handling of all work trains and milk trains operating exclusively within the switching limits;
>
> "(f) The handling of all pay car service operating exclusively within the switching limits (by a regularly assigned yard crew);

But, as was pointed out by the Carriers, the above mentioned occupational description of a portion of the tasks customarily performed by yardmen is not an enumeration and description of all Brotherhood of Railroad Trainmen tasks. On the contrary, this contract omits occupational descriptions of such admittedly yardmen duties as the following: Throwing switches, setting br*eak*s, blocking cars, bleeding cars, turning angle cocks, etc. The foregoing observations demonstrate that argument by elimination cannot and does not accomplish the exclusion of the Coupling Function from the ordinary and customary tasks performed by members of the Brotherhood of Railroad Trainmen, which are compensated by Eight (8) Hour Basic Daily Rates of Pay provided for in the master labor contract.

History and Early Developments Affecting the Coupling Function.

Prior to 1887, air brakes connecting the various cars of a train had not been installed generally. Chain brakes consisting of a system of rods and chains, continuously con- [fol. 73] nected throughout the train, had been experimented with somewhat unsuccessfully. In 1869 the Westinghouse Company designed a straight air brake, but it had a serious fault namely that if a breach occurred in the airline, all braking power was lost. Following careful tests in 1885 and 1886 the automatic Westinghouse air brake was approved, and railroads generally began to rapidly equip their cars and trains with such brakes.[5] In 1893 the Uniform Safety Appliance Act was passed by Congress, which confirmed the trend. Such monumental technological improvements manifestly created new and different tasks and functions for performance by railroad workers. In turn they immediately posed jurisdictional and other industrial relations problems for the Carriers and their labor organizations.

From the very outset, the Coupling Function was performed both by carmen and members of the Brotherhood of Railroad Trainmen. Apparently, practical operating considerations alone initially governed the determination of

[5] See: Carriers' Exhibit 5, page 7.

supervisory employees, in assigning this particular work to individual crafts.[6] In other words, following the general installation of air brakes on American Railroad rolling equipment, practical operating considerations largely determined whether members of the Brotherhood of Railroad Trainmen, or the Brotherhood of Railway Carmen would be used to perform the Coupling Function. During these early years the decision relative to the performance of this function was left largely to the discretion of the yardmaster, trainmaster, and superintendents, etc., who were responsible for getting such work done under the particular [fol. 74] circumstances obtaining at any given time and place.[7] Sensible railroading early precluded the stopping of a busy yard engine while long strings of cars were to be coupled, in order to permit its ground crew to spend extensive periods of time making air hose couplings. Likewise, good railroading precluded stopping a carman who at the moment might be busy inspecting cars, packing journal boxes, closing doors, tightening leaks, or repairing brake rigging, etc., to transport him to some distant track for the purpose of tying up the air on one or two cars. The travel distance involved might be several miles or more; and, it might have to be accomplished by locomotive or perhaps even on foot. Indeed, a preponderance of the evidence persuades the Referee, that during the first few years following the general installation of automatic air brakes on American Railroads, the Coupling Function was not exclusively confined to, or performed exclusively by either members of the Brotherhood of Railroad Trainmen, or the Brotherhood of Railway Carmen.

Evolution of Proscriptive Rules Affecting the Coupling Function and Provisions for Arbitraries.

Shortly after air brake systems were generally adopted, the Brotherhood of Railroad Trainmen began seeking and secured certain restrictive provisions or rules in their labor agreements affecting the Coupling Function. Initially, these early proscriptions took the form of requirements that

[6] See: Carriers' Exhibit 4, page 7.
[7] See Carrier's Exhibit 5, page 8.

carmen either assist with, or be used to perform the Coupling Function under certain limited and specified circum-[fol. 75] stances.[8] The concept of "limited and specified circumstances" is most significant, because under many contracts with American Railroads, members of the Brotherhood of Railroad Trainmen are and for years past have been willing to perform the Coupling Function, among others, in return for their eight hour basic daily rate of pay, and without additional compensation, and regardless of the presence or absence of carmen, in the following situations:

1. Between engine and first car;
2. Between caboose and rear car;
3. Between cars where cuts are made for crossings;
4. Between cars doubled from one track to another;
5. Between engine and caboose;
6. Between cars where cuts are made to set out cars.[9]

Progressively however, with the passage of time, the Brotherhood of Railroad Trainmen displayed an increasing reluctance to perform the Coupling Function, unless its members are granted additional pay in the form of "arbitraries", upon the hypothesis that such tasks are out-of-craft duties, rightfully belonging to carmen, a contention which will be discussed later on in greater detail.[10]
[fol. 76] But, for many decades after the initial restrictive rules were negotiated and inserted in sundry contracts with individual Carriers, the Brotherhood of Railroad Trainmen rarely pressed claims for violations which included requests for monentary payments to its members. In recent years however, such claims for violations of Coupling Function rules have frequently taken the form of requests for additional compensation. The reason for this development is obvious. In the years immediately following the negotiations of the restrictive coupling rules, many claims were made for their violation. When such violations were estab-

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[8] See: Carriers' Exhibit 4, pages 6 and 7.

[9] See: Carriers' Exhibit 4, page 6.

[10] The carmen belong to the Brotherhood of Railway Carmen of America, which is a distinct and separate labor organization from the Brotherhood of Railroad Trainmen.

lished before a private or governmental administrative tribunal, the Carrers would only be directed to observe the rule, but no monetary penalties would be assessed for its violation, unless the particular rule violated specifically provided for arbitraries. In order to reduce the number of violations, the Brotherhood of Railroad Trainmen finally adopted a policy of always requesting monetary penalties, for the violation of a restrictive rule affecting the Coupling Function.

The pioneer award involving monetary penalties for violations of a coupling rule appearing in a labor contract with the Brotherhood of Railroad Trainmen, is Award No. 8258, rendered by the First Division of the National Railroad Adjustment Board. On July 19, 1943, this Board sustained the claim of two yardmen employed by the Pittsburgh Lake Erie Railroad Company for an additional day's pay for having been required to perform the Coupling Function in violation of a rule on this subject. Following the release of this Award in Case No. 8258, many of the Carriers began negotiating amendments to their Coupling Function rule, providing for definite minimum and maximum arbitraries, in the nature of liquidated damages for violations of such [fol. 77] rules. Such new coupling function rules embracing definite and certain arbitraries, were thus gradually developed by particular Carriers to meet special problems on their individual properties.

These modern coupling function rules sometimes provide complete exemptions from the payment of arbitrary compensation between the engine and the first car, or between cars where cuts are made for crossings, or between cars doubled from one track to another, or between the last car and the caboose, etc., as heretofore described. Other modern amended rules provide for "closed territories" as hereinafter defined with arbitraries that are relatively high, frequently amounting to eight hours' pay, in addition to the basic straight time wage rates for members of the Brotherhood of Railroad Trainmen. Still others create "open territories" where only moderate penalties of perhaps an hour's pay are fixed as the arbitrary. Last but not least, some of the modern amended rules provide for uniform specific dollars and cents arbitraries whenever the Coupling

Function is performed, and regardless of whether it was done in "open or closed territories". It is in such a setting, that the propriety of drafting a new rule and the present proposal of the Carriers for such a new rule, must be determined.

Summarizing the evolution of these proscriptive rules and the arbitraries thereto attached, it will suffice to state that as of today, rules have been negotiated by the Brotherhood of Railroad Trainmen with most large railroads, restricting the use of trainmen or yardmen in the performance of the Coupling Function. These rules vary widely in terminology. In general, they apply restrictions only when car inspectors or carmen are present in the yard or ter- [fol. 78] minals where the work is to be performed. In a number of cases exceptions are made permitting the use of trainmen and yardmen to make certain designated hose couplings, even when car inspectors or carmen are available; and, nearly all permit the performance of the Coupling Function by trainmen and yardmen if arbitraries are paid. Likewise, at many points on most railroads where no car inspectors or carmen are employed, the use of trainmen and yardmen to perform the Coupling Function is, and for many years has been, an established fact, usually without the payment of any arbitrary. Likewise, at many other points where carmen are employed during only a portion of the calendar day, when they are not on duty, trainmen and yardmen perform the Coupling Function, usually without additional compensation.

The evolutionary circumstances just detailed, are persuasive that from the inauguration of the air brake systems to modern times, trainmen, yardmen, and carmen have all performed the Coupling Function. From the perspective of interpretations placed upon the restrictive rules themselves by the parties, such rules do not establish hard and fast exclusive craft boundaries as between the Brotherhood of Railroad Trainmen, and the Brotherhood of Railway Carmen, allocating the performance of the Coupling Function solely to carmen. On the contrary, present rules portray examples of the overlapping of craft lines, and illustrations of tasks which are common to the crafts of both the Brotherhood of Railway Carmen, and the Brotherhood of Railroad

Trainmen. It should also be observed that this conclusion is not original with the present Referee. The Federal District Court, in the case of Shipley vs. Pittsburgh and L. E. [fol. 79] R. Company, 83 F. Supp. 722, previously reached an identical conclusion, from which significantly no appeal was taken.[11]

Proposed Coupling Function Rule Offered by the Carriers.

In the interest of equity and uniformity, the Carriers have offered several proposed statements of a rule governing [fol. 80] the Coupling Function. Their most recent proposal on this subject is substantially as follows:

"Rules, agreements, interpretations or practices which prohibit or restrict the use of yardmen to couple or uncouple air, steam and signal hose, shall be modified so that there will be no prohibitions or restrictions on yardmen performing such work, and no payment therefor will be made, but where rules, agreements, interpretations or practices require payments to yardmen under conditions stated

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[11] The District Court of the United States made the following Findings of Fact, and Conclusions of Law in the Shipley case:

"11. The plaintiff trainmen who were required to couple air hose during the period covered by this action, where car inspectors were employed or available, in so coupling air hose were performing their regularly assigned duties; and on such occasions and in so doing were not working outside of their craft.

"12. The coupling of air hose was common to and part of the regular assigned duties of trainmen and carmen.

"13. The coupling of air hose is not common to any particular craft, and on the contrary was recognized in the craft of both trainmen and carmen.

"74. Car inspectors and trainmen had coupled air hose for a long period of time prior to and during the period involved in this action.

"75. Carmen or their representative bargaining agency have never complained that the coupling of air hose by trainmen was an infringement on their craft or the performance of their duties."

therein for coupling or uncoupling air, steam and signal hose, such rules, agreements, interpretations, or practices shall be changed to provide for the payments of only .. cents.

"Individual Carriers may elect to accept this rule or retain their present rules or practices without modification, by so notifying their general chairmen prior to ....., 1951, and if accepted, the date of such notification shall become the effective date."

They assert the effect of this rule would be, to eliminate present restrictive interpretations and/or practices limiting the use of yardmen to couple or uncouple air, steam and signal hose. It would avoid the confusion and possible further misunderstandings, which conceivably might arise out of an attempt to redefine the meaning and intent of the rule recommended by Emergency Board #81, as of June 15, 1950. Furthermore, it would preserve extra pay in the form of arbitraries for Brotherhood of Railroad Trainmen employees coupling or uncoupling air, steam or signal hose, under existing rules, agreements, interpretations or prac- [fol. 81] tices, but it would create a uniform ceiling for such extra pay, in such an amount as the present Referee, in equity and good conscience decides is just and reasonable.

The Carriers emphasize, that the rule they are presently urging upon this Referee, will cost them hundreds of thousands of dollars per annum. They point out that in equity and good conscience they should not be subject to the payment of any arbitraries whatever for the performance of the Coupling Function, because the tasks of coupling and uncoupling air, steam and signal hose are in fact a part of those embraced within Brotherhood of Railroad Trainmen work, and realistically constitutes an integral part of their regular tour of duty, for which the members of this Brotherhood receive Eight (8) Hours of Basic Daily Pay.

The Carriers further emphasize that the second paragraph of their proposal embodies what is commonly known as a "Savings Clause". In the past, such language has been made a part of agreements involving new or amended rules sought by either party. It would simply enable an individual carrier, to keep its existing rule pertaining to the

Coupling Function, in preference to the rule fixed and determined by this Referee, if such Carrier so desires.

In connection with their present proposal, the Carriers expressly declare and stipulate that they have no intention of transferring the Coupling Function entirely from carmen to trainmen. The Carriers unequivocally state that they do not intend under their proposal as hereinbefore quoted, to require trainmen and yardmen to perform the Coupling Function (quantatively speaking) in its entirety; [fol. 82] neither do they intend to discontinue all performance of this work by carmen. Their offer suggests that operational considerations shall govern, whether carmen, trainmen, or yardmen perform the Coupling Function.[12]

The Carriers also urge the ceiling on arbitraries provided for the performance of the Coupling Function, be fixed at sixty (60c) cents. The reasoning by which the Carriers arrive at the sixty (60c) cent figure is as follows: They claim it would be entirely impractical for only one member of a switching crew to perform the Coupling Function. Consequently, the Carriers take the position that it would be unwise to draft a Coupling Rule, providing for the payment of an arbitrary to only one member of the switching crew, as recommended by Emergency Board #81. They point out that many of the so called "Escape Agreements" which have been recently executed, provide for the payment to each member of the crew of one hour's pay in "open [fol. 83] territory", which demonstrates an intention of the Brotherhood and the Carriers to fix the ceiling for such

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[12] See: Stipulation in Rebuttal Statement by Frank J. Goebel submitted on behalf of the Carriers in the present proceeding, reading as follows at page 5:

"We need not discuss at length the discussion by the employees with respect to transfer of the work of coupling and uncoupling air hose from carmen to trainmen. As stated in my testimony before Emergency Board 81, the Carriers do not intend under this proposal to require trainmen and yardmen to perform all of this work, or to discontinue all performance of this work by carmen. Particular operational considerations will govern over it."

arbitraries, at the equivalent of one hour's pay. The current hourly rate for foremen is $1.925 and for helpers is $1.756. The average of these two rates would be approximately $1.85 per hour, and the Carriers suggest dividing the average of the two rates, and paying all three men in the crew, approximately sixty (60c) each for performing the Coupling Function.

Referee's Analysis of The Carriers' Proposal.

It will be instructive to analyze the Carriers' proposal, and ascertain what changes it will accomplish, if adopted. One of the principal purposes of this proposal appears to be, to put an end to the controversy which has existed for years over the propriety of the performance of the Coupling Function, by members of the Brotherhood of Railroad Trainmen. Such an intention is evident from the first clause of the proposal, reading as follows:

"Rules, agreements, interpretations, or practices which prohibit or restrict the use of yardmen to couple or uncouple air, steam and signal hose, shall be modified so that there will be no prohibitions or restrictions on yardmen performing such work—* * *."

It further appears to this Referee, that the next clause conditionally preserves rather than destroys existing rules, agreements, interpretations and practices currently providing payments (arbitraries), for the performance of the Coupling Function by hardmen but with the qualification that a reasonable uniform ceiling payment be fixed there-
[fol. 84] for by the Referee, which ceiling shall also constitute a minimum floor payment for such work.

The Carriers' proposal also probably is intended to prevent further future extension of the penalty payments for the performance of this function, through interpretation or construction of existing or future rules on this subject, unless arbitraries are created therein by clear, express, and unambiguous language.

As already observed, the last paragraph of the Carriers' proposal unquestionably will enable any individual Carrier if it so desires, to retain its present rule on this subject, in

preference to any rule that may be drafted and made effective by the Referee through this Award.

Brotherhood Position on the Coupling Function Rule.

The position of the Brotherhood of Railroad Trainmen, both historically and presently on the subject of Coupling Function Rules is, in general, to resist any change in the status quo. To state the same thing differently, the Brotherhood in substance and effect says, "leave the solution of this problem to collective bargaining among the interested parties." The organization urges that no one, particularly the present Referee, should alter the form, content, or amount of arbitraries to be paid under the various rules now in existence.

In support of this position, the Brotherhood strenuously argues that the Coupling Function is out-of-craft work for its members, and belongs to the carmen's craft, and that [fol. 85] this Referee should not alter this situation. The Brotherhood states on pages 1 and 2 of its Reply Brief:

"Every Coupling Rule in existence makes it crystal clear that trainmen and yardmen could not be required to perform this function only in the severely limited circumstance where carmen or others were not 'available' or 'employed' or the like * * *. The Coupling Function was never—to this day is not—a part of the yardmen and trainmen's obligation, as we have abundantly demonstrated in our principal statement."

The existence of any formal agreement between the Brotherhood of Railroad Trainmen and the Brotherhood of Railway Carmen of America, awarding the Coupling Function exclusively to carmen, insofar as this proceeding is concerned, is conspicuous by its absence. In addition, the Record in the present proceeding is replete with evidence demonstrating:

1. During many past decades the Brotherhood of Railroad Trainmen has contracted and agreed with sundry Carriers, to arrogate the performance of the alleged carmen Coupling Function to trainmen and yardmen, without addi-

tional pay, under certain circumstances heretofore described.[13]

2. For many past decades the Brotherhood of Railroad Trainmen has signed agreements with sundry Carriers [fol. 86] specifically describing "open territories" (where there are no carmen) and "closed territories" (where carmen are present); and contracting and agreeing for extra pieces of silver, to arrogate the performance of this alleged carmen Coupling Function to trainmen and yardmen.

Such evidence effectively disposes of the ingenious but unpersuasive argument of the Brotherhood of Railroad Trainmen, that the Coupling Function is out-of-craft work for its members, and should be performed exclusively by carmen. If this function belongs exclusively to the carmen's craft, how can the Brotherhood of Railroad Trainmen justify its performance by trainmen and yardmen under any circumstances, and particularly by the payment of arbitraries? Visualize if you will, the consternation that would appear on William Hutcheson's face, if the International Association of Machinists took the position that the setting of machinery belonged exclusively to the carpenters' craft, but that the Machinists' Union could arrogate the performance of this function to Machinists, provided the employers paid its members an "arbitrary". Such an argument is unpersuasive that the Coupling Function belongs exclusively to another craft, or that this Referee should not establish a new rule because of any such past fiction. On the contrary, such an illogical position convincingly demonstrates that the controversial function in question, is a typical example of overlapping craft lines, and an illustration of tasks which are common to both the carmen and trainmen crafts, and consequently should have little bearing on the determinations presently to be made. [fol. 87] The Brotherhood resists a new rule on still another ground. It argues that the creation of a new rule on this subject, will permit the Carriers to transfer the perform-

[13] For enumeration of the circumstances under which the members of the Brotherhood of Railroad Trainmen are willing to, and do perform the Coupling Function, see page 16 of this Award.

ance of the Coupling Function from the Brotherhood of Railway Carmen, to the members of the Brotherhood of Railroad Trainmen, in its entirety. In view of the wording of the Carriers' last proposal this argument by the Brotherhood appears entirely beside the point. Such an argument also obviously must be weighed in the light of the positive, unequivocal representations made by the Carriers, designed to impel this Referee to adopt their proposal. The statement made on behalf of the Carriers by Mr. Frank J. Goebel and quoted on page 19 of this Award, in the nature of a guarantee and warranty to induce this Referee to place the Carriers proposed new Coupling Rule in effect, must be accorded the weight due such evidence. This Referee does not believe the aforesaid representations and warranties, are being made by the Carriers with tongue in cheek. On the contrary, this Referee believes these representations are made in good faith, and expressly states that but for such representations, he would hesitate to accept and adopt the wording of the new Coupling Rule as proposed by the Carriers.

The Brotherhood also urges this Referee to decline the new rule proposed by the Carriers, because under it, the Carriers allegedly will return to the previous status when Coupling Rules could be violated, but no arbitraries could be enforced for such violations. This construction of the Carriers' proposal by the Brotherhood, does manifest violence in the customary and usual connotations accorded simple English terms, and is indeed a "violent interpretation" of the wording proposed.

[fol. 88] On page 20 of this Award the present Referee analyzed the intention manifested by the language appearing in the Carriers' proposal. He emphasized, that the palpable purpose of the second clause of the first paragraph of this proposal, was the preservation of existing rules and practices, plus the preservation of a uniform sum certain in money (an arbitrary) for the performance of the Coupling Function under such rules and practices. The obvious meaning of such language would effectively prevent the Carriers from returning to that state of affairs, which previously enabled Coupling Rules to be violated without the payment of arbitraries. The aforementioned argument of

the Brotherhoods is entirely beside the point, because the Carriers' proposal expressly, and in clear and unambiguous terms states, that arbitraries in a uniform sum to be fixed by this Referee, shall be paid for the performance of the Coupling Function where, "rules, agreements, interpretations or practices require payment to yardmen under conditions stated therein * * *" Clearly therefore, the argument of the Brotherhood that the proposed new rule would permit the Carriers to return to a situation where no arbitraries are payable for violations of the rule, is untenable.

As another reason for maintaining the status quo, the Brotherhood argues that previous Carrier proposals for Coupling Rule changes have been declined and denied by Emergency Boards, who have passed judgment on the same. In discussing the frame of reference for the present controversy, this Referee directed attention to the fact that the parties placed no limitations on his forthcoming determination. He was neither enjoined to be bound by previous [fol. 89] recommendations of Emergency Boards, nor was he directed to disregard them. In their wisdom, the parties to this proceeding have not by the wording of the present issue, compelled this Referee to assume that any part or present condition, circumstance, or determination, ipso facto is right, simply because it transpired, and consequently that it should be controlling of the determination presently to be made. The Referee was granted a carte blanc to determine the Coupling Rule controversy de nove. Hence unless prior pronouncements by Emergency Boards on this subject appear persuasive, this Referee is at liberty to reject them. Previous Emergency Boards have issued diverse and somewhat conflicting recommendations, and these appear unpersuasive to this Referee of the determination which should be here made, of the Coupling Function issue as stated in the present Submission.

The Brotherhood also strenuously argues, the Referee believes to an unwarranted conclusion, that collective bargaining is the only proper and desirable method for resolving the Coupling Function problem. It vigorously urges him to abstain from any action, and to simply return the Coupling Function controversy to the parties, to be resolved

or left in its present unresolved state, depending upon the productivity which would result from further collective bargaining.

Reference to the action which the present Referee took immediately prior to embracing the present controversy, appears to be sufficient comment regarding the propriety of such a determination. Resolution of this dispute by collective bargaining rather than by arbitration, is precisely what the Referee suggested, but, within twenty-four hours [fol. 90] after this suggestion was made, the Referee was informed by a representative of the Brotherhood of Railroad Trainmen, that neither party believed the Coupling Function issue, or for that matter the other issue also in dispute, could be resolved by further collective bargaining among the interested parties. Attention also has been directed to the circumstance, that during the succeeding thirty days following this development, the parties apparently have made no progress whatever through collective bargaining, in the resolution of the Coupling Function controversy. Upon such a state of the Record, the Referee must conclude, that it would be expecting the improbable if not the impossible, to assume that further collective bargaining in the foreseeable future, would be productive of a final, complete, and nation-wide determination of the Coupling Function dispute. Accordingly, the Referee is persuaded he should reject such a highly speculative method for solving the Coupling Function problem.

The Brotherhood makes a number of other contentions, all of which have been considered, but in none of them does the Referee find substantial merit. To undertake to consider and discuss all of these contentions, would extend this Decision and Award now overlong, to unreasonable lengths. With reference thereto the Referee will do nothing more here, than to say as already stated, that in none of the remaining contentions of the Brotherhood does he find substantial merit, such as would call for discussion.

Level of Pay for Performance Of the Coupling Function.

It does not logically follow however from the conclusions just stated, that yardmen should perform the Coupling [fol. 91] Function solely in consideration of their Basic

Daily Rate of Pay. This Referee is persuaded, the payment of a reasonable arbitrary for the performance of such work can well be sustained on another ground.

It has been established in the satisfaction of the Referee by a preponderance of the proof offered in this proceeding, that the performance of the Coupling Function by the members of the Brotherhood of Railroad Trainmen, subjects them to risks of bodily injury and/or death above and beyond risks of this character experienced by carmen, when the latter perform the identical function. It is undenied that when carmen perform the Coupling Function, they are protected by a blue flag, and at night by a blue light. This prohibits any cars thus protected from being moved while the Coupling Function is being performed by carmen. Indeed, it prevents any propulsion unit such as a locomotive, from being even physically attached to cars which are so protected by a blue flag or a blue light, and this is no inconsiderable protection. Manifestly therefore, when carmen perform the Coupling Function, they are not subject to the risk of bodily injury or death occasioned by inadvertent movement of a locomotive, or spontaneous slack action in a long train of cars. Although the evidence demonstrates this additional risk of bodily injury or death is not great in degree, it is nevertheless a very real additional risk thrust upon members of the Brotherhood of Railroad Trainmen, to which carmen are not subjected, and which at times does result in bodily injury and/or death to members of the Trainmen's Union.[14] [fol. 92] Since a preponderance of the evidence offered in this proceeding demonstrates, that the Coupling Function is not out-of-craft work for yardmen, but on the contrary is a typical example of overlapping craft lines and represents tasks common to both carmen and yardmen crafts, such an unestablished claim cannot properly become a factor for fixing the level of any arbitrary, to be paid yardmen for the performance of such a function. If this be true, the question then arises: What yardstick or industrial metric should the Referee use, in determining the level and extent of the arbitrary to be paid?

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[14] See: Brotherhood Exhibits, "D" and "F" and "F-1".

The conclusions heretofore outlined relative to the Coupling Function dispute, indicate all facets of the problem have been canvassed, save and except the amount or extent of the arbitrary which should be fixed for the performance of this Function by the yardmen. The factors properly bearing upon this phase of the controversy and which should determine and control the Referee's Award will now be examined.

Being subject to such an additional risk of bodily injury and/or death, in the judgment of this Referee, is sufficient grounds to sustain the payment of additional compensation to yardmen for performing the Coupling Function, in the form of a reasonable arbitrary. But, the amount of the arbitrary to be granted yardmen for performing the Coupling Function, cannot be ascertained by applying any exact mathematical formula.

The only yardstick established by the evidence in the present Record, is reasonable compensation for an additional risk of bodily injury or death thrust upon yardmen, [fol. 93] that is not assumed by carmen when they perform the identical function. Attention has been previously directed to the degree of this risk. It is uncontroverted that only about one member of the Brotherhood of Railroad Trainmen is killed annually while performing the Coupling Function on all American Railroads; and that this result arises only, when approximately 202,000 members of this organization perform substantially 172,000,000 man hours of work. In other words, the risk of death or bodily injury due to the movement of a locomotive or slack action of a train is remote, and very slight in degree. Yet this *is* the only ground established by the evidence, upon which the present Referee can sustain the payment of arbitraries to yardmen, for the performance of the Coupling Function.

Referee's Award on the Coupling Function Dispute.

After due consideration, and after being fully advised in the premises, and upon a preponderance of the proof received in this proceeding, the undersigned Referee makes the following Decision and Award, on the first issue ap-

pearing in the ancillary agreement dated May 25, 1951, which was signed by the parties to this proceeding:

A new rule should be drafted and inserted in the principal agreement between the parties to this proceeding dated May 25, 1951, which should read as follows: "Rules, agreements, interpretations or practices which prohibit or restrict the use of yardmen to couple or uncouple air, steam and signal hose, shall be modified so that there will be no prohibitions or restrictions on yardmen performing [fol. 94] such work and no payment therefor will be made but where rules, agreements, interpretations or practices require payment to yardmen under conditions stated therein for coupling or uncoupling air, steam and signal hose, such rules, agreements, interpretations, or practices shall be changed to provide for the payment of only 95 cents.

"Individual carriers may elect to accept this rule or retain their present rules or practices without modification, by so notifying their General Chairman prior to September 1, 1951, and if accepted the date of such notification shall become the effective date."

Decision and Award on the More Than One Class of Service Controversy.

(This decision and award is omitted.)

The Decision and award of the undersigned Referee upon the two (2) issues appearing in the ancillary agreement dated May 25, 1951, and which was signed by the parties to this proceeding, shall be final and binding upon said parties, and the same shall become effective on the thirtieth day following the date the Referee notifies the Carrier and Employee Committees of his Decision and Award, and each Carrier shall make its election within such period, in accordance with the savings clause provisions of the proposed rules.

(S.) Geo. Cheney, Referee.

Released at Washington, D. C. August 1, 1951.

[fol. 95] (Exhibits referred to are not attached.)

NOTE RE EXHIBIT

Exhibit "B"—Supplemental Agreement by the carriers and employees with respect to wages and rules, etc., dated 5/25/51, (Same as Exhibit "A"); Omitted from the Printed Record, being heretofore copied at page 33.

EXHIBIT "C"

Post Office Box 1538, Columbus, Georgia,

August 2, 1943.

Mr. W. J. Collins,
Assistant to General Manager,
Terminal Building, Macon, Georgia.

Dear Sir:

I desire conference for the purpose of adjusting complaint of yardmen at Atlanta protesting being required to couple air on cuts of cars leaving industry yard, testing brakes, etc. This matter has been handled with Superintendent Roney under docket No. 3 July 5th, same being declined claiming this has been a practice in industry yard for a number of years.

We contend that a force of car men are employed at industry yard for the purpose of testing air brakes on cars, which have to be tested before leaving and for making such repairs to the air brake equipment as is necessary, such as changing triples, packing pistons, as well as minor repairs to the cars.

[fol. 96] This work is not in line with switchmans duties and we therefore protest switchmen being required to do this work.

Yours very truly, (S.) G. D. King, (G. D. King),
Chairman, General Grievance Committee.

EXHIBIT "D"

Brotherhood of Railroad Trainmen
719 Realty Building, Savannah, Georgia.

November 17, 1947.

Mr. W. J. Collins, Assistant to General Manager,
Central of Georgia Railway,
211 Terminal Building, Macon, Georgia.

Dear Sir:

I wish to list for conference, request of Switchmen, Macon Yard, that they be relieved of coupling and uncoupling air hose.

This request handled in conference with Superintendent Roney, on October 27, 1947, by Local Chairman, W. F. Sanders.

Yours very truly, (S.) A. M. Sullivan, General Chairman.

[fol. 97] EXHIBIT "E"

202 Professional Bldg., Macon, Georgia,

September 16th, 1949.

Mr. W. J. Collins, Asst. to Vice-Pres. & Gen. Mgr.,
211 Terminal Building, Macon, Georgia.

Dear Sir:

This is to advise that we request conference for the purpose of negotiating a rule for roadmen coupling air hose and steam hose at outlying points where Car Inspectors are employed or not employed for yardmen coupling air hose and making air brake test on such as transfer cuts and house cuts on this property.

We do not have a rule covering this service and take the

position that these duties does not come within the scope of roadmen or yardmens duties.

Yours very truly, (S.) T. E. Temple, (T. E. Temple), General Chairman, BRT, O. L. Brooks, (O. L. Brooks), General Chairman, ORC.

TED/OLB:nj.

[fol. 98] EXHIBIT "F"

Central of Georgia Railway Company

Macon, Georgia, Aug. 16th, 1951.

Mr. B. G. Byington, General Chairman, B. of R. T.,
Room 202 Professional Building,
Macon, Ga.

Dear Sir:

Referring to Referees Decision and Award of August 1st, 1951 upon the following matters,

(1) Coupling and uncoupling Air, Signal and Steam Hose and

(2) More than one class of Road Service.

In accordance with this decision and award you are hereby advised that the Central of Georgia Railway Company desires to and will retain its present practices without modification with respect to Item (1) above.

As to Item (2) above the said Railway Company desires to and will accept the rule as contained in the award of the Referee effective September 1st, 1951 and which includes questions and answers as to proper application of said rule by the Referee.

[fol. 99] Please acknowledge receipt of this letter.

Very truly yours, (S.) W. J. Collins, Asst. to Vice Pres. & General Manager.

Copy to, Mr. A. J. Bier, Washington, D. C., Mr. R. R. Cummins, Savannah, Ga.

EXHIBIT "G"

Brotherhood of Railroad Trainmen

General Grievance Committee

Central of Georgia Railway

Room 202 Professional Building

Macon, Georgia

August 20, 1951.

Mr. W. J. Collins, Asst. to Vice President and
General Manager,

Central of Georgia Railway Company,
Terminal Building, Macon, Georgia.

Dear Sir:

Acknowledging your letter dated August 16 relative to Referee's Decision and Award of August 1, 1951 upon the following matters:

(1) Coupling and Uncoupling Air, Signal, and Steam [fol. 100] Hose and

(2) more than one class of Road Service.

You stated in agreement with this decision and award. You hereby notify and advise that the Central of Georgia Railway Company desires to and will retain its practice without modification with respect to Item (1) above and as to Item (2) above, the said Railway Company desires to and will accept the rule as contained in the Award of the Referee effective September 1, 1951 and which contains questions and answers as to proper application of said railroad by Referee.

Please be advised: I acknowledge receipt of your letter concerning the above mentioned matters but as yet, will be unable to enter into any eminent agreement concerning these decisions until I am further advised by my Grand Lodge.

I will advise you further when I will be agreeable to handle same.

Yours very truly, (S.) B. G. Byington, (B. G. Byington), General Chairman.

BGB/s.

[fol. 101] EXHIBIT "H"

Brotherhood of Railroad Trainmen

General Grievance Committee

Central of Georgia Railway

Room 202 Professional Building

Macon, Georgia

September 1, 1951.

Mr. W. J. Collins, Assistant to Vice Pres. and General Mgr.,

Central of Georgia Railway,
211 Terminal Building, Macon, Georgia.

Dear Sir:

With further reference to yours of August 16 relative to:

1. Coupling and uncoupling air, signal, and steam hose and

2. More than one class of road service.

Please be advised that your understanding as to any further handling not being necessary is correct, and there will be no need for any further handling as I now understand that the Chaney Award is legal and we accept the decision of the Referee.

Yours very truly, (S.) B. G. Byington, (B. G. Byington), General Chairman.

BGB/s.

[fol. 102] EXHIBIT "I"

Macon—September 5, 1951—wjc/w.

File T 6224.

Mr. W. E. Dillard, Columbus, Georgia, Mr. W. H. Young, Savannah, Georgia, Mr. H. W. Waters, Macon, Georgia, Mr. J. D. Wallis, Atlanta, Georgia.

Gentlemen:

The Brotherhood of Railroad Trainmen has been handling various claims for additional pay for yardmen coupling or uncoupling air, signal, and steam hose.

This controversy has now been settled by arbitration which was in our favor and, in effect, it simply means that we will pursue our present policy or practice. Please see that this is done and make no changes.

Very truly yours, —— ——, Asst. to Vice-Pres. & Gen. Mgr.

[fol. 103] EXHIBIT "J"

SUPREME COURT OF GEORGIA

Case Nos. 18748, 18749

CENTRAL OF GEORGIA RAILWAY COMPANY,

v.

BROTHERHOOD OF RAILROAD TRAINMEN ET AL.; AND VICE VERSA

Decided January 10, 1955

By the Court:

Hawkns, Justice. The Central of Georgia Railway Company, the plaintiff in error in the main bill of exceptions, assigns error upon the judgment of Chatham Superior Court sustaining certain general demurrers of the defendants and dismissing the plaintiff's petition on the merits. The defendants in the original petition, Local Lodge No. 721 of the Brotherhood of Railroad Trainmen, and certain

named persons in their individual capacity and as representatives of the labor organization and of the class of railroad trainmen employed by the plaintiff, are plaintiffs in error in the cross-bill of exceptions, assigning error upon the judgment of the trial Court overruling a general demurrer to the petition upon the ground that it shows on its face that the Court is without jurisdiction of the questions raised, and that the matters involved are within the jurisdiction of the National Railroad Adjustment Board exclusively, under Title 45, § 153 (i), of U.S.C.A.

[fol. 104] The railway company's petition alleges certain proceedings and negotiations between the railroads and the unions under the provisions of the Railway Labor Act, which resulted in a collective bargaining agreement settling all issues in dispute except two, one of which is referred to as the hose coupling function, and is the one here involved. It is alleged that on the same date on which the collective bargaining agreement was executed, article 8 of which provided that "Coupling and uncoupling air, signal and steam hose, subject to separate agreement made May 25, 1951," the parties entered into another agreement which is denominated as a contemporaneous ancillary agreement and which provides: "This agreement is supplemental to an agreement (collective bargaining agreement) entered into this same date by the carriers and employees parties hereto with respect to wages and rules of road and yard service employees," and that the parties are agreed "that the dispute as to this rule shall be submitted to a referee to be appointed by the President of the United States for decision," and that "The decision of the referee shall be final and binding on the parties, and shall become effective" upon the giving of the notice and the making of the election therein provided for. The referee thus provided for and thereafter appointed made his findings that "A new rule should be drafted and inserted in the principal agreement between the parties to this proceeding dated May 25, 1951, which should read as follows: 'Rules, agreements, interpretations or practices which prohibit or restrict the use of yardmen to couple or uncouple air, steam and signal hose, shall be modified so that there will be no prohibitions or restrictions on yardmen performing such work and no pay-

ment therefor will be made but where rules, agreements, [fol. 105] interpretations or practices require payment to yardmen under conditions stated therein for coupling or uncoupling air, steam and signal hose, such rules, agreements interpretations, or practices shall be changed to provide for the payment of only 95 cents. Individual carriers may elect to accept this rule or retain their present rules or practices without modification, by so notifying their General Chairman prior to September 1, 1951, and if accepted the date of such notification shall become the effective date.'" It is alleged that the railway gave due notice of its election to abide by the practice which had previously been in effect upon its system, and under which the employees who performed the hose coupling function received no additional or extra pay therefor. The collective bargaining agreement entered into between the parties provides for a moratorium as follows: "No proposals for changes in rates of pay, rules or working conditions will be initiated or progressed by the employees against any carrier or by any carrier against its employees, parties hereto, within a period of three years from October 1, 1950, except such proposals for changes . . . which may have been initiated prior to June 1, 1950." The petition alleges that notwithstanding the findings of the referee, the Brotherhood, on November 28, 1953, submitted to the railway company under the terms of the Railway Labor Act "and the current agreement" formal notice of demand for $1.50 a day for coupling hose; that the parties negotiated over this demand and were unable to agree; that the Mediation Board was called in and on May 21, 1954, the Mediator reported that his efforts had been unsuccessful and requested arbitration under Section 5 First of the Railway Labor Act; that arbitration was rejected by the Brotherhood, and that on May 25, 1954, [fol. 106] the railway company received a telegram from the Secretary of the National Mediation Board that the Brotherhood had authorized train and yardmen withdrawn from service Central of Georgia Railway at 5:00 p. m. Friday, May 28, 1954, unless matters in dispute satisfactorily adjusted prior to that time. Upon receipt of this information the railway company brought its petition for a declaratory judgment declaring the legal effect of and rights under

the arbitration award, a permanent injunction enforcing the award, and pending such an adjudication, a restraining order to maintain the status quo to prevent a threatened strike and alleged irreparable injury to the railway. The railway company contends that the award of the referee declining to allow additional pay to the members of the Brotherhood for coupling hose was a final award, binding on both parties, and that the Brotherhood cannot now seek to avoid consequences of that award. The Brotherhood contends that the award of the referee became a part of the original collective bargaining agreement and subject to the moratorium therein contained, and subject to change at the demand of the Brotherhood after the date of October 1, 1953, under the terms of the Railway Labor Act, Title 45, s156, U.S.C.A. Held:

1. The Railway Labor Act being a Federal statute, decisions of the United States Supreme Court construing and applying it are binding upon this Court. The Georgia Railroad v. Cubbedge, Hazelhurst & Co., 75 Ga. 321; Morris Plan Bank of Georgia v. Simmons, 201 Ga. 157, 164 (39 S. E. 2d 166).

2. In Slocum v. Delaware, Lackawanna & Western Railroad Co., 339 U. S. 239 (1) (70 Sup. Ct. 577, 94 L. ed. 795), it is held: "Under § 3 of the Railway Labor Act, the jurisdiction of the Adjustment Board to adjust [fol. 107] grievances and disputes of the type here involved is exclusive and the state Court erred in interpreting the agreements and entering a declaratory judgment. . . . The rationale of Order of Conductors v. Pitney, 326 U. S. 561, holding that Federal Courts should not interpret a carrier-union collective agreement prior to an interpretation of such agreement by the Adjustment Board, equally supports a denial of power to a state Court to invade the jurisdiction conferred on the Adjustment Board by the Railway Labor Act." In Order of Railway Conductors of America v. Southern Railway Co., 339 U. S. 255 (70 Sup. Ct. 585, 94 L. ed. 811), it is held: "A dispute arose between a railroad and a labor union as to the railroad's obligation under their collective-bargaining agreement to give conductors extra pay for certain services. The railroad refused the demand of the union and commenced a

declaratory judgment action in a state Court. The union thereafter filed a petition for hearing and award before the Adjustment Board under the Railway Labor Act. Held: The state Court was without power to interpret the terms of the agreement and adjudicate the dispute."

(a) Applying these rulings of the Supreme Court of the United States to the petition in the instant case, the trial judge erred in overruling the demurrer which raised the question of the Court's jurisdiction.

3. What is here held is not in conflict with the decision in Central of Georgia Railway Co. v. Culpepper, 209 Ga. 844 (76 S. E. 2d 482), for at page 847 this Court there recognized the rule that "A petitioner will be required to exhaust his administrative remedies before resort to the Courts will [fol. 108] be allowed when the determination of the suit will result primarily in a determination of future relations between the carrier and its employees." In the instant petition it is alleged that "Said declaratory judgment is required to direct the parties in their future negotiations."

Judgment reversed on the cross-bill of exceptions; main bill of exceptions dismissed. All the Justices concur except Wyatt, P. J., and Mobley, J., who dissent.

Complaint duly sworn to by —— ——. Jurat omitted in printing.

[fol. 109] IN UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF GEORGIA, SAVANNAH DIVISION

Civil Action File No. 797

CENTRAL OF GEORGIA RAILWAY COMPANY, Plaintiff,

v.

THE BROTHERHOOD OF RAILROAD TRAINMEN, LOCAL LODGE No. 721, Brotherhood of Railroad Trainmen, Z. P. Logan, W. A. Nealey, L. E. Chester, B. G. Byington, W. B. English, J. W. Shirley, J. G. Pardue, and The Class of Employees of Central of Georgia Railway Company, represented by the foregoing named defendants, Defendants

SUMMONS IN A CIVIL ACTION

To the above named Defendant: J. W. Shirley, Bibb County, Georgia.

You are hereby summoned and required to serve upon Mr. John B. Miller, plaintiff's attorney, whose address is Georgia State Savings Bank Building, Savannah, Georgia, an answer to the complaint which is herewith served upon you, within twenty days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against [fol. 110] you for the relief demanded in the complaint.

Scott A. Edwards, Clerk of Court, Eugene F. Edwards, Deputy Clerk.

(Seal of Court.)

Date: February 25, 1955.

Note.—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

Summons in Civil Action, Returnable not later than twenty days after service. John B. Miller, Georgia State Savings Bank Bldg., Savannah, Georgia, Attorney for Plaintiff.

RETURN ON SERVICE OF WRIT

UNITED STATES OF AMERICA,
Southern District of Georgia. ss.

I hereby certify and return that I served the annexed Complaint, Summons and Temporary Restraining Order on the therein-named Brotherhood of Railroad Trainmen and L. E. Chester, by handing to and leaving a true and correct copy thereof with L. E. Chester personally at Savannah, Georgia in said District on the 25th day of February A. D. 1955.

Joseph H. Young, U. S. Marshal, By (S.) LeRoy Williams, (LeRoy Williams), Deputy.

[fol. 111]

Marshal's cost	$28.00
Service	
Travel	
Total	$28.00

RETURN ON SERVICE OF WRIT

UNITED STATES OF AMERICA,
Southern District of Georgia. ss.

I hereby certify and return that I served the annexed Complaint, Summons and Temporary Restraining Order on the therein-named Local Lodge 721, Brotherhood of Railroad Trainmen and Z. P. Logan by handing to and leaving a true and correct copy thereof with Z. P. Logan personally at Savannah, Georgia in said District on the 25th day of January A. D. 1955.

Joseph H. Young, U. S. Marshal, By (S.) LeRoy Williams, (LeRoy Williams), Deputy.

RETURN ON SERVICE OF WRIT

UNITED STATES OF AMERICA,
Southern District of Georgia. ss.

I hereby certify and return that I served the annexed Complaint, Summons and Temporary Restraining Order

on the therein-named W. A. Nealey by handing to and leaving a true and correct copy thereof with him personally at Savannah, Georgia in said District on the 25th day of January A.D. 1955.

Joseph H. Young, U. S. Marshal, By (S.) LeRoy Williams, (LeRoy Williams), Deputy.

[fol. 112] RETURN ON SERVICE OF WRIT

UNITED STATES OF AMERICA,
Southern District of Georgia. ss.

I hereby certify and return that I served the annexed Complaint, Summons and Temporary Restraining Order on the therein-named B. G. Byington by handing to and leaving a true and correct copy thereof with him personally at Savannah, Georgia in said District on the 25th day of February A. D. 1955.

Joseph H. Young, U. S. Marshal, By (S.) LeRoy Williams, (LeRoy Williams), Deputy.

RETURN ON SERVICE OF WRIT

UNITED STATES OF AMERICA,
Southern District of Georgia. ss.

I hereby certify and return that I served the annexed Complaint, Summons and Temporary Restraining Order on the therein-named W. B. English by handing to and leaving a true and correct copy thereof with him personally at Savannah, Georgia in said District on the 25th day of February A. D. 1955.

Joseph H. Young, U. S. Marshal, By (S.) LeRoy Williams, (LeRoy Williams), Deputy.

[fol. 113] RETURN ON SERVICE OF WRIT

UNITED STATES OF AMERICA,
Southern District of Georgia. ss.

I hereby certify and return that I served the annexed Complaint, Summons and Temporary Restraining Order on the therein-named J. W. Shirley by handing to and leaving a true and correct copy thereof with him personally at Savannah, Georgia in said District on the 25th day of February A. D. 1955.

Joseph H. Young, U. S. Marshal, By (S.) LeRoy Williams, (LeRoy Williams), Deputy.

RETURN ON SERVICE OF WRIT

UNITED STATES OF AMERICA,
Southern District of Georgia. ss.

I hereby certify and return that I served the annexed Complaint, Summons and Temporary Restraining Order on the therein-named J. G. Pardue by handing to and leaving a true and correct copy thereof with him personally at Savannah, Georgia in said District on the 25th day of February A. D., 1955.

Joseph H. Young, U. S. Marshal, By (S.) LeRoy Williams, (LeRoy Williams), Deputy.

[fol. 114] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION—Filed February 25, 1955

Comes Now the Plaintiff in captioned cause, Central of Georgia Railway Company, and moves the Court for a temporary restraining order and a preliminary injunction in captioned cause, enjoining said Defendants from endeavoring to negotiate a cancellation, modification, change or revision of the award of Referee George Cheney, dated August 1, 1951, and from endeavoring to negotiate or from demanding a rule with the Company prescribing extra

compensation to defendant class of employees for coupling and uncoupling air, steam or signal hose; and further, from calling a strike, work stoppage, either directly or indirectly, and from striking or consummating a work stoppage, either directly or indirectly, on the lines of the Central because of any feature of the controversy hereinbefore described which has been referred to the National Railroad Adjustment Board, or because the Company fails or refuses to acquiesce in Defendants' demands for a revision of the Cheney Award or a revision of the present labor contract so as to produce a special arbitrary payment for coupling and uncoupling hose, in addition to their normal wage as compensation.

[fol. 115] The grounds in support of this motion are as follows:

1

The dispute concerning which the strike or work stoppage was called, has been referred to the National Railroad Adjustment Board pursuant to the Railway Labor Act, Title 45 U.S.C.A., Sections 151 et seq., and said Board is now in the process of determining the issue.

2

The services of the National Mediation Board have been invoked to no avail; the Mediator recommended arbitration which was agreeable to the Central of Georgia Railway Company but the Defendants declined to arbitrate.

3

The called strike or work stoppage is in violation of an arbitration agreement between the Plaintiff and Defendants and is likewise in violation of the Railway Labor Act.

4

Unless restrained immediately, said Defendants will strike and bring about the complete cessation of operation of Central of Georgia Railway Company. This will result in preventing the Central of Georgia Railway Company from fulfilling its obligation as an interstate rail-

road to render prompt and efficient service to the public under the Interstate Commerce Act.

[fol. 116] 5

Unless a temporary restraining order shall be issued without notice, a substantial and irreparable injury to the Central of Georgia Railway Company's property will be unavoidable, immediate and irreparable injury and loss and damage will result to the Central by reason of said strike, as more particularly described in the verified complaint filed herein. The Central has no adequate remedy at law.

6

If this motion be granted, the injuries, if any, to the Defendants herein, if a final judgment be in their favor, will be inconsiderable and will be adequately indemnified by bond, whereas the injury to the Plaintiff, if this relief be denied, will be ruinous, substantial, immediate and irreparable.

7

The Central of Georgia Railway Company has exhausted the possibility of settling this matter by negotiation and the matter is in the hands of the National Railroad Adjustment Board.

Wherefore, it is respectfully prayed that this motion be granted and a temporary restraining order and preliminary injunction issue.

(S.) John B. Miller, (John B. Miller), Attorney for Plaintiff, Central of Georgia Railway Company.

P. O. Box 642, Savannah, Georgia.

[fol. 117] In United States District Court

Temporary Restraining Order and Order Assigning Hearing on Motion for Preliminary Injunction—February 24, 1955

This matter having come on to be heard upon Plaintiff's motion for a temporary restraining order and preliminary

injunction, based upon the verified complaint herein filed, and testimony before the Court under oath, and it appearing to the Court that the Defendants are threatening to invoke an unlawful strike against the Plaintiff, which strike will substantially affect the interest of the public adversely and which will cause immediate, substantial and irreparable injury, loss and damage to the property of Plaintiff, unless a temporary order issue, restraining such acts, be granted without notice of hearing:

And it appearing that notice of hearing prior to the entering of the temporary restraining order should not be required because a substantial and irreparable injury to Plaintiff's property will be unavoidable and immediate; and irreparable injury, loss and damage to Plaintiff's property in detriment of the public interest will result immediately upon the invocation of the strike;

It Is Therefore Ordered that until 8:40 P.M., on the 1st day of March 1955, unless good cause shown, why this order should be further extended, the Defendants and each of them, their agents, representatives, and all persons acting through or under them, or through their order, be and they are hereby temporarily restrained from endeavoring to negotiate a cancellation, modifica- [fol. 118] tion, change or revision of the award of Referee George Cheney, dated August 1, 1951, and from endeavoring to negotiate or from demanding a rule with the Company prescribing extra compensation to defendant class of employees for coupling and uncoupling air, steam or signal hose, and further, from calling a strike, work stoppage, either directly or indirectly, and from striking or consummating a work stoppage, either directly or indirectly, on the lines of the Central because of any feature of the controversy hereinbefore described which has been referred to the National Railroad Adjustment Board, or because the Company fails or refuses to acquiesce in Defendants' demands for a revision of the Cheney Award or a revision of the present labor contract so as to produce a special arbitrary payment for coupling and uncoupling hose, in addition to their normal wage as compensation.

It Is Further Ordered that Plaintiff's motion for pre-

liminary injunction be set for hearing in this Court at 11:00 o'clock A.M., in the Post Office Building at Brunswick, Georgia, on the 28th day of February 1955. This temporary restraining order is on the condition that a bond with sufficient surety be filed by the Plaintiff herein, and approved by the Clerk or a Deputy Clerk of this Court, in the sum of Forty Thousand Dollars ($40,000.00) conditioned upon the payment to the Defendants or any of them for any loss, expense, or damage, including all reasonable costs and expense of defense, against the order or against the granting of any injunctive relief sought in this proceeding, and subsequently denied by the Court, should it later appear that this order, or any subsequent in-
[fol. 119] junctive relief are improvidently or erroneously granted.

Dated this 24th day of February 1955, at Brunswick, Georgia, at 8:40 P.M. o'clock.

(S.) F. M. Scarlett, District Judge, United States District Court, Southern District of Georgia.

IN UNITED STATES DISTRICT COURT

BOND SUPPORTING TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION—Approved February 25, 1955

GEORGIA,
Chatham County.

Whereas, the Central of Georgia Railway Company, in captioned cause has moved the Court to issue a temporary restraining order and preliminary injunction; and

Whereas, the Court has issued a temporary restraining order conditioned upon the execution, approval by the Clerk, and filing of a proper bond; and

Whereas, Central of Georgia Railway Company, does desire to herewith execute said bond in compliance with said order;

Now, Therefore, Central of Georgia Railway Company, Principal, and Globe Indemnity Company of New York as Security, do hereby acknowledge themselves jointly and [fol. 120] severally held and bound unto the Defendants in said cause, their heirs, successors and assigns, in the penal sum of Forty Thousand ($40,000.00) Dollars, for the payment of any loss, expense or damage, including all reasonable costs and expense of defense against the order or against the granting of an injunctive relief sought in this proceeding, and subsequently denied by the Court, should it later appear that this order, or any subsequent injunctive relief is improvidently erroneously granted.

In Witness Whereof, the Principal and Security have caused the execution and sealing of this instrument by their proper corporate officers, or attorneys-in-fact, this 24th day of February 1955.

Central of Georgia Railway Co., Principal, E. D. Bidez, Vice-President.

Attest:

B. D. Helmken, Secretary, Globe Indemnity Co. of New York, Security, By H. M. Carter, Attorney in Fact.

Approved by me this 25th day of February, 1955.

Eugene F. Edwards, Deputy Clerk, United States District Court, Southern Dist. of Georgia.

[fol. 121] In United States District Court

Motion to Dismiss and Order Denying—Filed February 28th, 1955

Now comes the Brotherhood of Railroad Trainmen, et al defendants in the above entitled cause and moves the Court as follows:

1. To dismiss the action because the petition fails to state a claim against the defendants upon which relief can be granted.

2. Dismiss the action because the petition shows on its face that the Court is without jurisdiction of the subject matter.

3. To dismiss the action on the grounds that the Court lacks jurisdiction because the petition shows that the plaintiff has not exhausted its administrative remedy.

4. The petition shows upon its face that plaintiff is seeking an injunction under circumstances that are prohibited by the laws of the United States, to-wit, the Norris La-Guardia Act, Title 29, Sections 101-115 and seeks no other relief.

February 28, 1955.

Myrick & Myrick, Attorneys for Brotherhod of Railroad Trainmen.

[fol. 122] I certify that I have served John Miller with a copy of the foregoing motion.

Shelby Myrick, Jr., Of Counsel for Defendants.

ORDER

After hearing arguments of all counsel in this case the within motions are hereby overruled and denied.

This February 28th, 1955.

F. M. Scarlett, U. S. Judge.

[fol. 123] In United States District Court

Transcript of the Proceedings

Filed April 27, 1955, Lena W. Simkin, Deputy Clerk.

[Title omitted]

Brunswick, Georgia

February 28, 1955 March 4, 1955

In the United States District Court for the Southern District of Georgia, Savannah Division

Civil Action No. 797

Central of Georgia Railway Company

vs.

The Brotherhood of Railroad Trainmen, Local Lodge No. 721, Brotherhood of Railroad Trainmen, S. P. Logan, W. A. Nealey, L. E. Chester, B. G. Byington, W. B. English, J. W. Shirley, J. G. Pardue, and the Class of Employees of Central of Georgia Railway Company Represented by the foregoing named Defendants

Appearances:

For the Plaintiff: Mr. John B. Miller, Attorney at Law, P. O. Box 642, Savannah, Georgia.

For the Defendant: Messrs. Myrick and Myrick, Attorneys at Law, Liberty National Bank Building, Savannah, Georgia, Mr. W. K. Sullivan, Attorney at Law, Cleveland, Ohio.

[fol. 124] Transcript of Proceedings on Hearing on Motion to Dismiss:

Statement made by Mr. Miller, Counsel for Plaintiff;
Statement made by Mr. Myrick, Counsel for Defendants;
Colloquy between Court and Counsel;
Statement made my Mr. Miller, Counsel for Plaintiff;
Colloquy between Court and Counsel;

Omitted from the Printed Record, pursuant to Appellants' Amended Designation as to Printing Record, copied at page 3.

At Chambers

Two-thirty o'clock, Monday Afternoon
February 28, 1955

STIPULATIONS RE PLAINTIFF'S PETITION

Mr. Myrick: Your Honor as counsel for the defendant we make the following stipulations and agreements about the petition of the plaintiffs. Now we admit paragraphs one, two, three, and four. Paragraph five being conclusions of law and allegations as to what jurisdiction the Court has, we deny that. Paragraph six and seven of the petition, we admit. Paragraph eight we admit with the exception of the last sentence which says that the second amendment is not the proper statement of this complaint, and you say that the second amendment is the proper statement of this complaint. Paragraph nine, ten and eleven we admit. You say with regards to paragraph twelve that the records quote the highest and best evidence and [fol. 125] they will speak for themselves. We agree to paragraph thirteen for the minute but we want to introduce the copy of the order——

COLLOQUY BETWEEN COURT AND COUNSEL

The Court: Beg pardon. Did you say you do admit it?

Mr. Myrick: Yes, sir. Paragraph fourteen we admit. We don't admit paragraph fifteen for this reason. We really—there are really two controversies here and we don't admit anywhere in this petition the controversy is what they say it is. We say it is an entirely different controversy. But to the—Controversy is as to whatever controversy that there is but to the word controversy we do not admit.

The Court: Well then what do you do to fifteen?

Mr. Myrick: Well sir, it is only a legal effect there anyway but I suppose we deny it. It says the Court's opinion

speaks for itself and whatever they said would be correct. I don't know if he has got any allegations, that's sixteen. We admit paragraph seventeen with the stipulation that the remittitur of the Superior Court of Chatham County of Georgia was signed the order of the remittitur to making the judgment of the Trial Court, making the remittitur of the Supreme Court the judgment of that Court was signed on Monday, January 21, 1955 and that the transmittal of this matter to the National Railroad Adjustment Board was received by the Adjustment Board on January 21, 1955.

[fol. 126] Mr. Miller: As a point of clarification, I believe you said the remittitur was signed on the 21, did you not?

Mr. Myrick: 31st.

Mr. Miller: 31st.

Mr. Myrick: In other words all I am doing is getting the paragraph a little more complete. What you stated there is correct.

Mr. Miller: The Order of the remittitur was signed on the 31st of January, 1955 and was received on the 21st.

Mr. Myrick: We admit paragraph eighteen except that we deny that this case has ever been docketed. It has been filed all right but we say it has not been docketed. We admit nineteen and the same applies to paragraph and the same applies to paragraph twenty-(a). We say again that it has not been docketed. It has been filed but not docketed.

The Court: It has been filed but not docketed.

Mr. Myrick: Yes, sir.

[fol. 127] Mr. Miller: Do you admit all the other allegations in paragraph twenty-(a)?

Mr. Myrick: Yes. And twenty-(b). Twenty-(b) we admit. And Twenty-one we admit. Twenty-two we admit.

The Court: This dispute has been docketed as number A-4755.

Mr. Myrick: Where is that?

The Court: In paragraph twenty-one, that wire in twenty-one. "This dispute has been given Docket No. A-4755" (reading from wire in paragraph twenty-one).

Mr. Myrick: We admit paragraph twenty-two. Now

Twenty-three is really where we get our issue of fact and Judge we expressly deny that.

The Court: Deny twenty-three.

Mr. Myrick: We also deny paragraph twenty-four in a sense. Now the paragraph twenty-five we deny too and paragraph twenty-six we deny. Twenty-seven is conclusions of law which we deny, also paragraph twenty-eight. In other words we deny paragraph twenty-nine for this reason, they say there is only one important controversy in this case and we say there are really [fol. 128] two controversies, so I don't admit paragraph twenty-nine. We deny paragraph thirty. I don't think that paragraph thirty-one requires us to make answer at all. It just says what the Company is willing to do. Paragraph Thirty-two is simply a request for this Court to do something. It doesn't require an answer either.

The Court: That covers it, doesn't it?

Mr. Myrick: In other words there are a lot of documents in there that I have admitted to save the trouble of proving.

Mr. Miller: Is my understanding correct, for the purpose of this preliminary hearing on this preliminary injunction you have admitted those allegations?

Mr. Myrick: That is right. And I will file my answer within the time. I certainly wouldn't file my answer any different from that.

The Court: All right. What is the issue to be determined now?

Mr. Myrick: Well, Judge, under the Norris-LaGuardia Act there are certain findings of fact that you are supposed to make that we contend.

[fol. 129] The Court: I will do that when I prepare my judgment.

Mr. Myrick: There are certain things that I denied in here that he has to prove.

The Court: All right. Go ahead. How many witnesses have you got Mr. Miller?

Mr. Miller: Judge I have three.

The Court: How many have you got Shelby?

Mr. Myrick: I have got one.

Mr. Miller: Judge I would like to call for the purpose of cross examination one of the defendants in this case, Mr. Byington.

The Court: All right. Mr. Byington will you take the stand, please?

Cross-examination.

Mr. B. G. Byington (one of the defendants), sworn in, testified.

[fol. 130] Cross-examination.

By Mr. Miller:

Q. Mr. Byington, will you state your name, please sir?

A. B. G. Byington.

Q. Are you one of the defendants in this case?

A. Yes.

Q. Mr. Byington are you an officer of the Brotherhood of Railroad Trainmen?

A. Yes.

Q. Would you state what office you hold?

A. Chairman of the Grievance Committee of the Brotherhood *of* Railroad Trainmen of the Central of Georgia Railroad Company.

Q. Does that mean that you are more or less head local official for the employees of the Central of Georgia representing for your craft?

A. Yes.

Q. Mr. Byington, do you recall when Mr. Kennedy authorized Mr. Chester to call a strike on the property of the Central of Georgia Railroad a short time back by the Brotherhood of Railroad Trainmen?

A. I would like for you to state that question again.

Q. All right, sir. Is it not a fact that Mr. Chester wired the Central of Georgia Railroad Company to the effect that a strike was going to be called at 6:00 o'clock Friday morning, February 18th, subject to the satisfactory settlement of the pending "hose coupling issue"?

A. That is true.

Q. Did that strike go into effect?

A. It did not.

Q. Why did it not go into effect, Mr. Byington?

[fol. 131] A. My understanding of its not becoming effective was due to the fact that the National Mediation Board proffering its services the strike was ordered postponed by President Kennedy pending further negotiations and with the assistance of the members of the National Mediation Board Service.

Q. Is it not true that that strike would have gone into effect at 6:00 A.M., February 18, 1955 had it not been for the intervention of the Mediation Board?

A. I can't say that it would have. In my opinion there could have been an agreement consummated prior to the time.

Q. Assuming that no agreement was consummated the strike would have been called, would it not?

A. Yes.

Q. And I believe you stated that Mr. Kennedy did authorize the postponement of the strike pending mediation?

A. Yes.

Q. And I believe it is true, is it not, that last Monday that the Mediators came on the property of the Central of Georgia and mediation began between the Brotherhood and the Central?

A. Yes.

Q. Mr. Byington, if your organization put into effect the strike on the Central of Georgia Railroad Company would the other Brotherhoods observe your picket lines?

A. I do not know.

Q. You do not know? What has been your past experience on this?

A. We never had a work stoppage so I can not say. Not since I have had anything to do with it.

Q. How about when you were an employee and not connected with it?

[fol. 132] A. The only strike that I recall was in 1946. That was on a national measure. The Engineers and Trainmen came out together at that time.

Q. Isn't it true that the other Brotherhoods ordinarily respect the picket lines in a Brotherhood strike?

A. It is my understanding that any person who don't

cross a picket line will have the backing of their organization.

Q. In other words, if the individual does not wish to cross the line the organization will back them up?

A. To a certain degree, yes.

Q. In other words the other Brotherhoods wouldn't insist on their members crossing your picket lines?

A. I can't speak for any Brotherhood except that one I represent.

Mr. Myrick: Your Honor, I object to this line of questioning. What the other Brotherhoods do hasn't got anything to do with this case.

The Court: What I presume he is after is to show that if there is a strike by one if the Brotherhoods don't observe their picket line it would be a general strike. That is what I presume he is after.

Mr. Miller: Yes, that is it.

Mr. Myrick: I would like to go a little bit further. He could not testify on anything except what he knew of his own knowledge.

[fol. 133] Q. I want to ask you this question, Mr. Byington. Isn't it true from your experience that your Brotherhood respects the picket line of another Brotherhood?

A. To the contrary, Mr. Miller, about the strike in effect, just very recently about the first of the year on the A and S. P. Railroad when Mr. Collins called me over long distance and talked to me in Atlanta and I agreed that our men would handle it explaining that they went in and brought them out from Montgomery.

Q. Is that a strike on the Central of Georgia or a strike on another Railroad?

A. It was a strike on another Railroad but the same craft.

Q. It was on another Railroad?

A. Yes.

Q. Mr. Byington did you not tell, within the last three months, did you not tell certain employees of the Central of Georgia that when your Brotherhood went on strike you were going to set up a picket line, and that they had better not cross those picket lines?

A. I did not. I said if we went on strike we would immediately set up a picket line.

Q. You told the employees of the Central that did you not?

A. I said we would immediately set up picket lines.

Q. That's right.

A. I deny the other allegations.

Q. You deny that you told any employee that no one had better cross your picket line?

A. I deny that emphatically.

Q. What did you tell them with reference to the crossing of your picket lines?

A. Nothing more than what I said. There had been no controversy about crossing the picket lines.

[fol. 134] Q. No, I realize that this is in anticipation of a picket line. You tell the Court here that you did not tell any employee of the Central as to what would happen if some one failed to respect your picket line?

A. Absolutely not.

Q. If any one testified that you told them——

A. If any one testified to the contrary it would be an outright prevarication of facts.

Q. Mr. Byington, is it not true if an injunction is not continued in this case that your organization will go out on strike?

A. That is an assumption you have, I can't answer that.

The Court: Didn't Mr. Myrick admit that?

Mr. Myrick: No, sir.

The Court: Didn't I say if there is anything we could do in the event I didn't grant the injunction if there was any reason you would have the strike and you said no?

Mr. Myrick: No, sir.

The Court: Don't you remember I asked you if there is anything we could do in case I did not grant the injunction to prevent a strike?——

Mr. Myrick: Maybe I said no. I was talking about the Court. I don't know anything the Court can do, there may be something the employees can do.

[fol. 135] The Court: Well, I meant the employees.

Q. Mr. Byington assuming that your organization and the Central can not get together on a rule concerning payment for coupling hose is it not true that your organization would go out on strike?

A. Only time will answer that question, the lapse of time and all that is involved in this case, the many circumstances which surround it, I couldn't definitely say that we would or would not.

Q. In other words you wouldn't deny you would go out on strike?

A. I would say to directly state that we would, would be clearly assumptious on my part.

Q. As I understand you are not the only one to speak on what is done by the Brotherhood, it is subject to Mr. Chester's approval and Mr. Kennedy's approval, isn't it? The President?

A. That is true.

Q. It you wanted to call a strike on the Central of Georgia Railway property and who would call it? Would you do it?

A. No.

Q. Who would?

A. President Kennedy.

Q. There are such things as Wild Cat strikes, aren't they?

A. Yes, there is.

Q. Is a Wildcat Strike a strike on a railroad not authorized by the Brotherhood?

A. It certainly is.

Q. Haven't you actually heard of the definite possibility that the Central of Georgia would be subjected to a Wildcat strike if this issue is not settled?

[fol. 136] A. Absolutely not, and to the contrary I have instructed and advised any man who works under our agreement who comes out or away from his place of employment on an unauthoritatively so on a Wildcat procedure that I will personally take the position that he has resigned his job and have his name removed from the Seniority roster. Those instructions have been issued to every location on the Railroad.

Q. Do you go on record to that effect?

A. Yes. I can assure this Court there will never be no Wildcat strike as long as I have got anything to do with it.

Q. If the Mediator stated that your organization was threatening Wildcat Strikes he misrepresented the facts, is that true?

A. I don't know anything that the Mediator said.

Q. I mean—you didn't talk to the Mediator?

A. Yes. But not in conference with the management.

Q. In other words the Mediator does not talk to both groups together, he talks to each group separately?

A. Unless they agree to a meeting and then he arranges a joint conference. Which never was done in this case. You all had this Court procedure before the Mediator ever got through mediating between the parties. The Mediator was still meeting with us on Friday morning trying to get us together after you all had got the Court injunction on Thursday night.

Q. What did the Mediator tell you Friday morning?

A. He said that Mr. Collins had asked him to wait until 10:00 or 10:30 and that Mr. Collins was at that time going to give him his final answer in the form of a proposal, I figured to reach an agreement. That was on Friday morn-[fol. 137] ing after you all come down here on Thursday night, and got this Court order and it was a great surprise to us for the Marshal to come in on us at noon time. We had no knowledge of that. The Mediator didn't either, unless he lied to us.

Q. You said that Mr. Collins asked the Mediator to wait. Wait for what? What was the Mediator about to do?

A. Just what I said. Just what he told Chester over the telephone. I was sitting there listening to the conversation.

Q. You said Mr. Collins asked the Mediator to wait. Wait for what? Was the Mediator about to leave him?

A. No, not that I knew anything about. He was going to leave——

Q. What was he asking him to wait for?

A. To give him more time to handle his President as I understood it, of the Railroad. The problem that he was up against——

Q. You are not answering my question. You said the Mediator was requested to wait until Friday morning,

what was the Mediator requested to wait for? Wait before he did what? What was the Mediator about to do that Mr. Collins asked him to wait for? Do you know?

A. He was going to dismiss the case from any further mediation and Mr. Collins asked him not to as I understood it.

Q. That's right. Isn't it true that Mediation had been unsuccessful and the Mediator was going to leave? The afternoon of the day that His Honor granted the injunction?

A. Absolutely not. No, you are retracting too far. We had no knowledge of his services being terminated until Friday morning when he said it looked like we were not [fol. 138] going to get no where, but Mr. Collins had asked him to wait until 10:30 that he was going to submit a final order. We did not even then at 10:30 Friday morning know that they had applied to Your Honor for an injunction. We didn't know it until the Marshal walked into the Savannah Hotel around 12 o'clock noon or a little after.

Q. Mr. Byington, isn't it true that when the Marshal came in Friday morning to serve you that you denied that you were the defendant in this case?

A. Well, I just started walking off. He said "Hey Mr. Byington", and I said, "My name isn't Byington". I spied him when he walked in, I knew who he was. (stated laughingly).

Q. You are making a joke of it now but it wasn't a joke when he was trying to serve you, was it?

A. Oh, naturally I admit, I have got sense enough to know Mr. Miller that when a man comes to serve a paper you can't get away from the long arm of the law, and if it hadn't been just more or less of a joke why I certainly would not have tried to walk out. I saw him the minute I walked in the Hotel. I walked right into him. I knew what was going to happen.

Q. Isn't it true you were walking away and he came up and got you?

A. That is right.

Q. You were headed out, weren't you?

A. Yes, I sure was but not in no big hurry.

Q. You denied that you were Byington, didn't you?

A. I did kiddingly. Yes. I later admitted it. I will say on the spur of the moment it was very provoking for me to be confronted with what I term the undermining method that you had used in securing the restraining order.

[fol. 139] Q. Isn't it true Mr. Byington you won't take the position now,—let me re-phrase the question. You won't tell the Court here today that when that order was served that you weren't contemplating calling a strike on the Central of Georgia Railroad. Will you?

A. We were very hopeful and had our hopes built up, Your Honor, that this Mediator would get the two parties together. Frankly and seriously strike is the worst word in the dictionary to me and for me to have to be a party, shoulder the responsibility of all of the men's families that are involved in this dispute certainly would have to be of such grave conditions to justify such believing.

Q. You wouldn't agree now Mr. Byington would you to delay striking until the Railroad Adjustment Board could determine this controversy?

A. Our reason for that Judge is this.

Q. Answer my question.

The Court: I think both of you are getting away from the issue. Go ahead and ask the next question.

Q. The next question that I want to ask him—it is his testimony that it would take so long for the Adjustment Board to decide the question. Would you be willing to settle it by arbitration then?

A. That wouldn't be left entirely to me.

Q. So you can't say whether you would or not? Can you say personally whether you would advocate settling this or not?

A. Personally, I would not.

Mr. Miller: That is all.

[fol. 140] Mr. W. J. Collins, a witness for the Plaintiff, sworn in, testified on

Direct-examination.

By Mr. Miller:

Q. Mr. Collins state your full name and address please, sir.

A. W. J. Collins.

Q. Mr. Collins how long have you been employed by the Central of Georgia Railroad Company?

A. Since July 5, 1912.

Q. Did you ever represent the Brotherhood of Railroad Brakeman as their Officer?

A. Yes, sir.

Q. What position was that and for how long?

A. I was the Committee Chairman——

Q. Is that the same job Mr. Byington has?

A. Yes. February 1, 1943.

Q. When were you made Director of Personnel?

A. I was made Director of Personnel on the 1st of February, 1953, I believe it was.

Q. How long have you been employed by the Central of Georgia as one of their Personnel Officers?

A. I had the Office in Macon since February 1, 1943 until recently when they consolidated. I handled all the train service people's troubles as best I could.

Q. Mr. Collins, you are familiar with the strike that was called by the Brotherhood of the Railroad Trainmen.

A. Yes, sir.

Q. Are you familiar with the controversy which gave rise to that strike?

A. Yes.

[fol. 141] Q. Will you state to the Court what that controversy is as briefly as possible?

A. Well, if I get too far off, I, of cour-e, want to be corrected. Some time quite a while ago a question came up from the Trainmen that it was not their duty to couple air hose. It was more or less a reverse proposition from any I have ever known. It had always been the policy as far as I ever knew that it was a part of their duties. I, myself, had

collected many claims, similar claims from the Railroad for people who do that kind of work. The first I recall the men were signing the time sheets claiming an additional day's pay for coupling hose. I, of course, declined this increase, and there was nothing done about it. Later, when the National Board——

The Court: What year was that?

The Witness: That was about in 1950 when it started. The Railroad put a clause in their counter-proposal asking that where they had ruled paying the penalty payment for coupling hose that those rules be eliminated. That there be no penalties paid and we had no rules and never had had. The thing went on until finally it resolved itself into what we call a National Movement and the various committees on both sides were given a full power of attorney to deal with the questions and we gave our power of attorney, and settlement was finally made but the question as to the air hose coupling was not included as I understand but they settled the air hose question ruling in this manner, it was agreed by the Committies on both sides that the President of the United States, who was then Mr. Harry Truman, [fol. 142] would appoint a mutual arbitrator to come into the question and settle the issues and his decision would be final and binding on both parties. Mr. Truman appointed Mr. George Cheney, an eminent attorney from Long Beach, California who held hearings in Washington, D. C. I need go no further than than, the award speaks for itself. It had been a source of complaint since about 1870, just here and there. So when they moved in on me for a rule——

Q. When was that?

A. I don't remember the exact date it started. 1953, the best I recall, we, of course, didn't agree and the request was filed for arbitration, $1.50 arbitrary.

The Court: What would you have to give that crew? How many people?

A. Well, the man who coupled the hose, and any other help with the coupling a hose.

The Court: Who would be on the crew besides the man?

A. They vary, Your Honor. In some cases we have a rule that requires a minimum for the ground crew, as we call it, the minimum for the ground crew is the foreman and two switchmen. Then we have a crew where we have what we call—all the switchmen call them car riders. They would have five or six men in them.

The Court: And each one would get a $1.50 regardless of whether they had anything to do with the coupling?
[fol. 143] A. That is right. Anybody on a crew, the whole crew. So we never could agree on it and finally the Mediation was invoked and Mediator Cole, and we settled all the questions we had reasonably satisfactory but we never could agree on the air coupling hose and that was left out, so that is when we went to the State Court in Trying to see whether or not our position was correct or incorrect.

Q. What was your position?

A. My position has always been that the Cheney award meant exactly what it said and that it was a common law of arbitration pure and simple and not an arbitration under the Railroad Labor Act or any other statutory provision which would take it out of that category, in other words, my claim in this was that the entire question was to be settled in the manner which they agreed upon. We did settle it and in the award there were two provisions made. There were three. First, the award provided that the Railroads provide a coupling rule by September 1, they had thirty days after that and if they elected to do so could retain that present rule. Railroads could retain a rule of ninety-five cents, and on railroads where they had no rule which was us, and there was many of them, that they could either accept the ninety-five cents rule by notifying within thirty days or they could retain their present practice by notifying within thirty days. So I wrote a letter to Mr. Byington telling him that we had decided to retain our present practice just as we had. And he wrote me back that according to the records he had handled it with President Kennedy and that he understood that the Cheney award was legal in this respect and I held to that position all the way through because I felt that if there ever had been a question settled——

[fol. 144] Q. Mr. Collins the controversy over which this strike was called is that the same controversy which our — outlined to the Judge?

A. Yes.

Mr. Myrick: I object to that question, on the grounds——

The Court: Well, I will admit it.

Q. Mr. Collins the position taken by the Brotherhood prior to the State Court injunction proceeding is the same position taken in this Court of Arbitration, is that not true?

A. Yes. Well there was never anything to agree to, of course, we talked about negotiations and all the way through there, we either had to make a rule or face a strike.

Q. Mr. Collins will you state to the Court what would be the result to the Central of Georgia Railroad in the event this strike is called?

A. Well, it would just be tied up. It would not be operating.

Q. Would the Railroad operate?

A. No.

Q. And the Central, would it be able to run, handle shipments rendered them by its patrons?

A. No, sir.

Q. Would—What would happen to the patrons of the Central of Georgia, how would they be served?

A. Well, they would go on handling the best they could, giving it to the other railroads.

Q. How would the general public be served by the Central of Georgia in the event of a strike?

[fol. 145] A. They would do the best they could——

Q. What would be your statement as to the minimum loss that the Central of Georgia would sustain just for a day if the Railroad was tied up by a strike?

A. Well, based on figures from the 1st fiscal year, I would say it would run around a hundred or Two Thousand Dollars a day.

Q. So the amount in controversy exceeds Three Thousand Dollars?

A. Yes.

Q. Mr. Collins do you have any reason to believe that there would be any violence resulting from the strike?

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Myrick: Your Honor, that calls for a conclusion—I object.

The Court: I don't think so.

A. Yes, I have reason to believe there would be.

Mr. Myrick: Your Honor, I reiterate my objection.

The Court: I overrule your objection.

Q. Mr. Collins would you state what you base your fears on and anticipation of violence?

A. Well, naturally, when anything like that happens a picket line is always put up and anybody that goes across it is not looked on with favor and that is how the trouble starts.

[fol. 146] Q. I realize this is all what you anticipate because it hasn't occurred yet but do you have any reason to anticipate that there might be any damage to the property of the Central?

A. Yes.

Q. Would you give your reasons for that fear and state what property?

A. Well, I could not state what property, but in — Company as large as that it is physically impossible to watch all things. I don't want to say anything about anybody—that is true in all large groups. There is always some people that don't do what they set out to do, they go beyond it.

Q. What has been your experience in prior strikes.

A. I never had any on the Central of Georgia Railway. I have been connected with them elsewhere if I may be——

Mr. Myrick: Your Honor, I object and ask that you rule out all the testimony because he said he had never had any experience on the Central of Georgia Railroad and the reason that he gave a minute ago is not based on anything that he could draw his conclusion from.

The Court: Have you ever been connected with any other strikes on any other railroad?

A. Yes. I was called in Chicago——

Mr. Miller: Is what you previously testified to based on your general Railroad experience and that experience is with other railroads?

A. Yes. I was called in Chicago in 1919——

[fol. 147] Mr. Myrick: Your Honor, what some other group of people may do does not concern these defendants.

The Court: He said he was called himself. I think that gets it.

Mr. Myrick: But the actions, what some other people may have done doesn't mean these people are going to do it.

The Court: No, that is what he said. If he had reason to believe there might be violence and destruction of property. And he has given his reasons why he thinks there might be. That's what he said. I'll let you go ahead.

A. I was called in Chicago in 1919 when they had what is generally known as the outlaw strike starting in the Chicago yards and spread to the Pacific Coast. I worked there for weeks trying to—of course, I wasn't doing much, but I worked with Mr. William Doe who later became Secretary of Labor in Mr. Hoover's cabinet. We slept in one hotel and registered in another. We were afraid to stay where we were registered at, and my experience with that is, it's war. That is just about as well as I could describe it. I don't mean to say that happens every time but that is my experience. You couldn't talk to these people.

Q. Well, Mr. Collins, have you heard anything in this present controversy that would lead you to fear damage to person or property?

Mr. Myrick: I object, Your Honor.

[fol. 148] The Court: I think that it could be in this particular case, that is the reason——

A. I have no doubt, based on my experience but what we would have.

Mr. Myrick: That doesn't apply to this particular case.

The Court: You had better ask your question over.

Q. I asked Mr. Collins if you have heard anything from any of the defendants or otherwise that would lead you to believe that there would be damage to person or property in this particular strike, if it comes about.

A. If I may be permitted, I can tell you all I have heard directly. Our Chief Dispatcher, Mr. Cane, told me——

Mr. Myrick: I object to what anybody told him other than what——

The Court: Is he a defendant connected with this case?

A. No, sir, he is an official of our Railroad, he is our Chief Dispatcher at Savannah.

The Court: Well is that in connection with these defendants?

A. Yes, sir.

[fol. 149] The Court: Well it is in connection with——

Mr. Myrick: But that is hearsay. Now if one of the defendants told him anything that would be admissible, but what somebody else told him the defendant said is not admissible.

The Court: I agree with you. Anything that these men might say, but you couldn't say what somebody else told.

A. It would be hearsay what I said of the actual threat. I anticipated that. That's why I asked.

Q. Now have you heard, Mr. Collins, anything for this particular strike that would lead you to believe that other than your general experience that there would be any danger to person or property if there is a strike?

A. No, other than this other thing——

Q. Other than your general experience.

A. That's right.

Q. Mr. Collins, in the event that an injunction were granted in this case by this Court which would, if course, prevent the irreparable injury to the Railroad you testified about, what would be the injury, if any, within your knowledge to the defendants in this case?

A. None that I know of. Since we have proper bond and are still solvent.

Q. Mr. Collins, to your knowledge is there any administrative procedure or any procedure short of recourse to the Courts under which the status quo could be maintained in this case pending a decision of this controversy by the adjustment board.

A. I know of no other possibility.

[fol. 150] Mr. Myrick: Wait a minute John. I didn't hear that question. Would you repeat the question?

Q. The question is Mr. Myrick, that is—is there any remedy through any adjustment board or through any administrative proceedure which would prevent a strike and maintain a status quo pending a decision of this award in controversy by the Adjustment Board?

Mr. Myrick: Well, I object to that, Your Honor.

The Court: I sustain your objection.

Mr. Miller: I realize that is probably a conclusion of law.

Q. Mr. Collins, would it be possible for the Public Officers such as the Sheriff, the Chief of Police and other public peace officers——

Mr. Myrick: I object to that question unless he shows he has already asked them and they said they——

The Court: Well he doesn't have to go that far. He knows from his own knowledge. I will let him answer it.

Q. Mr. Collins answer that question if you will.

A. No, you couldn't have the Sheriffs and police. They couldn't patrol the Railroad.

[fol. 151] Q. Why do you say that?

A. Well, there is too much of it.

Q. Mr. Collins, do you remember the position taken by the Defendants in this case in the State Court decision with reference to jurisdiction——

Mr. Myrick: Your Honor, I submit the record in the case——

The Court: All right.

Q. Do you recall the argument of counsel before the Court on this jurisdictional question?

Mr. Myrick: Your Honor, I still say that the record is the highest and best evidence and I have already agreed

with Mr. Miller that I would put the pleadings in there if he wants them.

The Court: Well, if you put them in there I think it would answer the question.

Mr. Miller: If you have it I would like to look at it.

This is a copy of the demurrer and I would like to ask the Clerk to mark it Plaintiff's Exhibit Number 1 and I would like to introduce it in evidence at this time. I am sure that Counsel agrees to that of plaintiff's exhibit number one which is the demurrer of these same defendants in a case in the Chatham County Superior Court September 30, 1954 in which the first ground states the [fol. 152] petition shows on its face that this Court has no jurisdiction over the questions raised, and the matters involved are within the jurisdiction of the Railroad Labor Board exclusively.

Q. Mr. Collins, that said demurrer was urged at the hearing of the demurrers by the State Court?

A. Yes.

Mr. Miller: Mr. Myrick you stated that you did not agree that you heard the jurisdictional question by brief before the Supreme Court?

Mr. Myrick: Well I said that the decision of the Court did show what I agreed. I would like to make a stipulation. If you recall what I said earlier—I told the Supreme Court that I wanted them to proceed to decide the case on its merits but I was not waiving the jurisdictional question that is all the statements that I made in the Supreme Court.

Q. Mr. Collins, the matter that you submitted on behalf of the Central of Georgia Railroad Company to the National Railroad Adjustment Board which you refer to in paragraph 17 in defendant's petition in this case, is that the same controversy concerning what you had negotiated prior to the——

Mr. Myrick: Your Honor, I object to that. It calls for a conclusion of the witness——

[fol. 153] The Court: What was the question, I did not get the question.

Mr. Miller: I asked Mr. Collins if the—Well, did you prepare and submit to the National Railroad Adjustment Board in January of this year the controversies concerning the whole substance——

Mr. Myrick: I would like for him to ask that question in more detail. I don't object to it.

The Court: Well he can ask it.

Q. You prepared it?

A. Yes.

Q. Are you familiar with the contents of it?

A. Yes.

Q. Did you represent the Railroad in the negotiations in the controversy out of which that strike threat grew?

A. Yes.

Q. Is the controversy that you submitted to the National Railroad Adjustment Board identical to this controversy which is about to give rise to this strike?

A. Yes.

Mr. Myrick: Your Honor, I object to that as it calls for a conclusion of the witness.

The Court: I wouldn't think it would if he said he prepared it himself. This witness testified he prepared it himself and submitted them himself. I wouldn't think it would.

[fol. 154] Mr. Miller: Mr. Myrick it is borne out by evidence he should be qualified to answer that question.

The Court: All right, you can ask it.

Q. Mr. Collins, there has been some question raised as to whether or not your submission to the National Railroad Adjustment Board had been docketed by the National Railroad Adjustment Board. Well now, has it been submitted to the Board?

A. Yes.

Q. Has the Board received it?

A. It has. The Board has received it, and we have an acknowledgment.

Q. Well, when is the case docketed before the Adjustment board?

A. The case is docketed usually after both parties have

been notified it is received and get their answer and then they docket the case in the nature of a hearing.

Mr. Myrick: I object to that, Your Honor, the——

The Witness: The term docket is a non-consequental technicality.

Mr. Myrick: That is a conclusion of the witness, that last statement.

The Court: I think so.

[fol. 155] Mr. Miller: The term docketed didn't mean that the case hadn't been considered.

The Court: They admit it had been filed but not docketed.

Mr. Miller: If you don't docket it, the witness says there is nothing to answer the docket on.

The Witness: If you will pardon me, when they get both sides' answer then they docket the case.

Q. Mr. Collins speaking for the Central of Georgia Railroad Company are you prepared to keep such records and post such bond in this case as the Judge may prescribe in the event he granted a preliminary injunction?

A. Yes, sir.

Q. Mr. Collins would there be any way to measure in Dollars and Cents the damage to the Central of Georgia Railroad Company if a strike is called and the railroad has to cease operations?

Mr. Myrick: Your Honor, I object to that question. He has already asked him that question, that is repitition.

The Court: He said it would be about $100,000. a day as I recall, he didn't say whether ir would be definite.

[fol. 156] Mr. Miller: That's right, I didn't ask him, I don't believe, whether it would be measureable or not all of the injury but all of the damage considered would be measured in terms of dollars and cents.

A. I wouldn't know how to do that. It would be tremendous.

Q. Could you measure in terms of dollars and cents the loss of patrons to the other forms of transportation?

A. Well, we would lose them all for the time being.

Mr. Miller: I have no further questions.

Cross-examination.

By Mr. Myrick:

Q. You stated $100,000. a minute ago, that was a guess, you don't really know?

A. No, I stated that based on past earnings for the past fiscal year.

Q. You know that from your own knowledge?

A. Our past earnings $36,000,000.

Q. Is that the gross or net?

The Court: Well I think the question— -

Mr. Myrick: Well, Your Honor, if he knows the exact amount of damage then the damage is on his record.

[fol. 157] The Court: I think he testified he didn't know.

Q. Mr. Collins, when did you come to the Central of Georgia?

A. Well I came back here in 1912, July 5, 1912. I didn't tell Mr. Miller that but I originally started to work for the Central in 1905.

Q. How long were you gone?

A. I was gone from about 1908 until 1912.

Q. You have been with them constantly since about 1912 with the exception of the dates you mentioned?

A. All the time except when I was on a leave of absence.

Q. How many strikes have there been on the Central of Georgia Railroad in the last twenty years?

A. Oh there has been about two that I recall.

Q. In the last fifteen years there has been how many?

A. I don't know, I would have to check the record. In 1912 we had the strike with the Clerks that was when Mr. Downs was General Manager and then we had the shop men strike. We went through with that. And then we had the Engineers and Trainmen strike not long ago. That was in 1945.

Q. Before that what was the nearest date that you had a strike?

A. Before that?

Q. Yes, sir. Before 1946.

A. I don't remember before that. It was a good while ago.

Q. Now I will ask you this question. Did any violence occur during the 1946 strike?

A. In 1946? No, it didn't last long enough.

[fol. 158] Q. Was there any damage to any property of the Central?

A. I don't recall.

Q. Was anybody injured through violence?

A. Not that I know of. It only lasted about forty-eight hours. That was in 1946.

Q. There has been no other strikes in the last ten years?

A. I said on the Central? I told you two previous to 1946.

Q. I thought you said it was more than twenty years previous to now?

A. I never did give the date positive and I can't. But I know it has been quite a while ago. I can tell you by land marks and things that happened and you can easily verify this. Mr. L. A. Downs just came here and hadn't been here long when he had the shop men strike.

Q. Was that in '22 that Mr. Downs came here?

A. I don't know. I couldn't tell you and be positive about the date. That could be easily verified. We had a lot of trouble when the shop men struck.

Q. When was that?

A. That was along about, I guess it was in the 1920, '25.

Q. That was within the last twenty years, is it not true that there was a great deal less violence in a strike of this sort than there used to be?

A. I don't know. We haven't had but three that I recall, The last one——

Q. The last one you had there was no violence was it?

A. None that I recall.

Q. All right. In May 1954 there was mediation then was there not?

[fol. 159] A. Yes.

Q. Would you state whether or not you accepted their prof-er of arbitration at that time?

A. I did.

Q. Did you do it in writing?

A. I said to the mediator——

Q. Did you write a letter?

A. No.

Q. Did he ask you to give him a letter?

A. No, he didn't ask me for a letter. I said I will agree to it. I said to Mr. Chester that we agreed to arbitrate. We do that now. We never refuse to arbitrate.

Q. Did you answer the copy of this letter addressed jointly to you and Mr. Chester suggesting arbitration? Did he send you a letter suggesting arbitration? This letter right here in other words.

A. Yes, he sent that.

The Court: What is the date of it?

A. May 21, 1954.

The Court: Let me read that letter.

Q. You did not answer that in writing?

A. I don't recall whether I did or not?

The Court: This was a request from the mediator asking for arbitration.

[fol. 160] Mr. Myrick: Well they alleged in the petition that they were agreeable to arbitration.

The Court: There was no agreement there, it is just a request by the mediator for arbitration.

Q. You swore to the first petition in which you filed an affidavit for the petition?

A. I don't recall. I don't think I did.

Q. Did you read it?

A. Yes, I have read everything there is in it.

Q. In the first suit you didn't contend that you agreed to arbitrate before that mediator I just spoke about, did you?

A. I don't recall. Mr. Miller prepared the petition and our position all the way through is that things are settled but I have and did say to Mr. Cole and said to the gentlemen the other day as far as we are concerned we would arbitrate. Let them pick a man and we would pick a man——

Mr. Miller: The petition itself says we agreed to arbitrate.

A. I have always said it.

Q. Now did you agree to arbitrate a request for a change in rule?

A. I agreed to arbitrate the whole fuss.

Q. Are you now willing to arbitrate or negotiate a request for a change in rules as distinguished from the controversy that you raise that the Cheney award is not binding?

[fol. 161] A. Not and separate a*dn* pick out this part of it and will get out of this Cheney award. No, sir.

Q. Well, then you are not willing to arbitrate the thirty day notice for pay for roadmen or yardmen?

A. We are willing to arbitrate the whole question but the Cheney award is the door to the question you compromise.

Q. Has that been your position with the mediator?

A. Yes.

Q. In a sense then you did not agree to arbitration with the mediator?

A. Yes. I agreed to arbitrate the whole question but not to pick it to pieces.

Q. What did he agree to arbitrate for?

A. I don't know, you will have to ask him.

Q. Did you talk with him?

A. Yes, I talked with him.

Q. Don't you have attached to this suit a proffer of arbitration, the notice that was sent to you?

A. I don't know.

Q. The proffer asking you to arbitrate.

A. No. That was the proffer of the——

Q. Now did the mediation board the other day when they met a week or so ago, did they offer to arbitrate that, or offer to see if you all could agree on arbitration? Did the mediator suggest that to you?

A. The mediator laughed at me when I suggested arbitration.

Q. I asked you sir, did he suggest it?

A. No, he did not. He didn't suggest anything.

Q. Does your petition allege that he did, that he offered arbitration and we rejected it?

A. How was that?

Q. Does your petition allege that he offered arbitration and we rejected it?

[fol. 162] Yes. That is a fact. He said that he agreed to all he could do when he got through, asked us if we would do that. Said that to Mr. Cole and will say it to you.

The Court: He said he did. I think it is alleged that he did. He said that he did.

A. Yes we told him. I said that and I say it now. We will arbitrate the whole question.

Q. Now in paragraph twenty-three, will you read the allegations right here? Read it out loud.

A. It says, "In accordance with the Railway Labor Act 545 USCA 155 the mediator endeavored to induce the parties to commit their controversy for arbitration. The Central of Georgia Railway Company was agreeable to arbitration and the defendant Union refused to commit the matter to arbitration."

Q. It says, the mediator endeavored to induce the parties to commit their controversy for arbitration, that is your allegation isn't it?

A. Yes, sir.

Q. Now in your testimony a moment ago is that he did not.

A. He didn't write me but he said, "Would you agree to arbitrate?". I said, "That is what I have been trying to do ever since I have been in this thing." Will they arbitrate? and he said "No."

Q. You don't know whether or not it was offered——

A. No, I don't know. I wouldn't know that because I didn't meet with them.

Q. Well sir, did you have any telephone conversations with the Mediator on the February 25th—of this month?

[fol. 163] A. When was that?

Q. It was on Friday.

A. Yes, I did.

Q. Is it not true that he called you and asked you to give

him his final answer by 10:00 and you asked him for an additional half hour to reply to him?

A. It is not true. I had a date with Mr. Switzer. He had told me on late Thursday afternoon that—he said I can't hold these fellows any longer, they are talking about wildcatting and everything and they are hounding me to turn them loose, and it don't look like we are going to get anywhere and I figure I might as well be on my way.

Q. This was Friday night?

A. No that was not Friday. That was Thursday late Thursday afternoon.

Q. At what time?

A. And I said well——

Q. I said what time, sir, please?

A. I don't know the exact time it was later in the afternoon between 4:00 and 5:00 o'clock, I will say between three, four and five o'clock. I said I will see you in the morning and I said I will give you a ring Mr. Switzer, if it suits you, or you can call me, either one. So he called me about 10:30 and I told him I was very busy which I was at the time, and I would call him a little later and I did call him, I called him around 11:00 o'clock. I said if you can come down I think I can tell you just what we will do and what we won't do.

Q. This was Friday?

A. Yes, and I told him, I said "If nothing else has developed, we can give you the proposition that had just been made before that".

Q. Had you ever answered that?

[fol. 164] A. No, there wasn't anything to answer.

Q. You had not told the mediator——

A. Yes, I told him as quick as he give it to me I wasn't thinking about accepting it. I said if I had been going to accept that you would never had to been down here and we would never had this controversy, and I told him that we couldn't do it and that I just didn't know and thanked him for his services and every thing and he said well I am going to get out of town and going back to Washington this afternoon and he said you will get a telegram from the Office and late that afternoon I got a telegram from Wash-

ington from the Board and that is all the dealings I had with him that day.

Q. And that is the ending of the mediation services that was after this injunction suit was filed?

A. No, sir. It was before it was filed.

Q. Now I will ask you this question. Didn't the Mediator call you at 10:00 and you requested thirty minutes more time in which to give him a final answer?

A. No, sir. There was nothing said about time. The only question was when we were to meet. He called me and I was to call him.

Q. Meet with who?

A. With him. And he was to call me or I was to call him the next morning and that is exactly how *it* was. When I called him I told him, I said, "Well probably you had better come down because I wouldn't want to tell you over the telephone the final on this thing and if nothing else has developed", I says, "You could come down or I will come up there". He said, "I will be there in fifteen minutes."

Q. All right now, you were supposed to have the meeting Friday then?

[fol. 165] A. Yes, and Did have the meeting.

Q. What was the purpose of this meeting?

A. The purpose of this meeting was to do just what he asked me to do. To let him know whether or not we would throw in the towel and give them what they asked for.

Q. So, therefore, the services of the mediation board had not finished as of—

A. It was practically finished—

Q. I am not asking you whether it was practically finished, I am asking you whether it was finished?

A. It was finished on Thursday afternoon when he told me there was nothing in the world that these gentlemen could do and nothing that he could get them to do and he was thoroughly convinced of it, and there was only one answer to it, and that was, we were going to have a strike on our Railroad as quick as they could put it on.

Q. You had not told them what you would do up to that time?

A. I told him all the way through.

Q. Why were you going to have a meeting again Friday then?

A. Well, pardon me, but if you have ever worked for the railroad, something comes up and they won't ever give up until someone builds a fire under them.

Q. I want to ask you this question, do you know of your own knowledge whether or not arbitration was offered by the Mediator to the Brotherhood of Railway Trainmen? I am not talking about what the arbitrator told you, do you know of your own knowledge

A. No, because I did not see them. There is no way in the world I could know.

[fol. 166] Q. Did you communicate such suggestion by letter as you did previously?

A. Pardon me, I want the Court to know all the facts, I asked Mr. Switzer the definite question, was he going to write a letter and suggest arbitration and he said he didn't think he was because Mr. Cole had already done it before.

Q. At any rate, if that is so, then the allegation you have got here in paragraph twenty-three that the mediator endeavored to induce the parties to commit their controversy to arbitration is incorrect? Is that right?

A. I don't know. He told me that they wouldn't do it. It was time wasted. Whether he tried to get them to or not. That is what he come for is to work out a solution. The only settlement was, in other words, to take it and pay them off.

Q. Mr. Collins, are you familiar with the Cheney award?

A. Yes.

Q. Is it not true that under the Cheney award some people get—some Railroads give 95 cents an hour? You testified to that earlier, didn't you?

A. Yes, I did.

Q. Is it not true that where you have a practice of not paying anything that you are entitled yourself to continue not paying them anything?

A. The award speaks for itself. I would like to read it.

Q. Now under that Rule, I ask you whether or not it is true that some Railroads in the country get ninety-five cents?

The Court: He testified they did:

[fol. 167] Q. You have been Chairman of the Trainmen yourself and handled grievances, have you ever known any agreement concerning a definite rate of pay that is ever binding? That was ever made by any Railroad in this Country?

A. I don't know that I could recall on—this is not a rate of pay.

Q. Ninety-five cents per hour for coupling and uncoupling air hose, that is not a rate of pay?

A. No.

Q. What is it?

A. That is a definite amount of money, is it not? Is it compensation?

A. No, it is not. It is not known so in Labor Circles. It is known as an arbitrary where you do something and they pay you extra for it.

Q. Do you contend that the next hundred years that they are going to receive ninety-five cents an hour—

A. No, I don't contend that.

Q. You admit that they can ask for $1.50 then?

A. I don't deny that they can ask for anything but I do deny that they can come in and repeatedly with war where they agreed that the common law of arbitration—

Q. You are not answering the question. I asked you, could the people who get that ninety-five cents ask for $1.50?

A. There is nothing to prevent anyone from asking for anything.

The Court: He answered that.

Q. Isn't that what you are doing at the time trying to stop us from asking for $1.50?

[fol. 168] A. No. The purpose of my suit is to make people respect their agreements.

The Court: I think we should get down to something.

Mr. Myrick: Your Honor, I think this question is very pertinent.

The Court: Well he has answered it.

Q. Is it not true that you rejected that division of the Cheney award that allowed the couplers to receive ninety-five cents and you don't even come under the Cheney award?

A. No, sir, that is not true. There is nothing in the Cheney award that ever applied to our Railroad except the article right here.

Q. What does that state?

A. It says, "Individual carriers may elect to accept this rule or retain their present rules or practices without modification, by so notifying their General Chairman prior to September 1, 1951, and if accepted the date of such notification shall become the effective date."

That is the rule that applied to us and all other carriers that didn't have a rule.

Q. Is it not true that you rejected the rule?

A. No.

Q. You didn't write a letter to the Railroad rejecting the ninety-five cent rule?

A. No.

[fol. 169] Q. What letter did you write? Can you state what it is without bothering the file?

A. I wrote him and told him that under the Cheney award this Railroad Central of Georgia had elected to accept this provision of the award—

Mr. Miller: Is this the letter you are talking about?

Mr. Myrick: Reading the letter,—Did your letter read this way "In accordance with this decision award we hereby advise that the Central of Georgia desires to and will retain its present practice"?

A. Yes.

The Court: Anything else, gentlemen?

Mr. Myrick: Your Honor could I have about five minutes to get a drink of water?

The Court: Sure. Take a five minute recess.

The Court recessed for five minutes.

Cross Examination.

(Mr. W. J. Collins)

Continued By Mr. Myrick:

Q. Mr. Collins do you know of any other Railroad who has taken the position that the Cheney award is final and forever binding?

[fol. 170] A. No, sir.

Q. Do you know of any Railroad who has entered into a rule saying arbitrary or compensation or whatever you want to call it for the coupling after the Cheney award was made?

Mr. Miller: Your Honor, I really don't see the relevancy of the question. I object to the question.

Mr. Myrick: The relevancy of it is whether he claims this thing is final and binding and I am just trying to find out about it.

The Court: What the other Railroads do wouldn't make it final and binding. I think I will sustain the question. What the other railroads do wouldn't make it binding. I am ruling on this case.

Mr. Miller: I can give you any number of reasons why they didn't grant a rule.

The Court: Let's go on.

Q. Mr. Collins you contend in your suit here that the Cheney award applies to yardmen and roadmen or merely to yardmen?

A. So far as the Central of Georgia Railroad has to do with it, it don't apply to either, since we notified them that we would retain our present practice.

Q. The Cheney Award doesn't apply to either one of them?

[fol. 171] A. No.

Q. Well what are you basing the suit on then? That the Cheney award is final and binding then if it doesn't apply to either one of them?

A. You never let me read the last part of it.

The Court: Let him read that last part.

A. (Reading from the Cheney Award) "Individual carriers may elect to accept this rule or retain their present rules or practices without modification by so notifying their General Chairman prior to September 1, 1951, and if accepted the date of such notification shall become the effective date." We notified them that was our understanding and in other words we maintain our present practice.

Q. Do you contend that this Court has the right to enjoin the strike by the road men seeking to gain compensation or arbitrary or whatever you want to call it, for the coupling hose?

A. I would not attempt to try to answer. That is the right of the jury of this Court.

Q. Well sir, I am not asking you about the whole thing, I am just asking you, do the roadmen as distinguished from the roadmen and yardmen, or just merely yardmen?

A. Well, with the proposition to divide the roadmen from the yardmen, all the eggs are in the same basket.

Q. In other words you think that the Cheney award dealt with the roadmen and yardmen, and not just yardmen?

A. I am not familiar with that because we did not have anything to do with that.

[fol. 172] Q. Will you read the first portion of this and then see if you can find the reference to rolling a man as deals particularly among the yardmen?

A. "A new rule should be drafted and inserted in the principal agreement between the parties to this proceeding dated May 25, 1951, which should read as follows: "Rules, agreement, interpretations or practices which prohibit or restrict the use of yardmen to couple or uncouple air, steam and signal hose, shall be modified so that there will be no prohibitions or restrictions on yardmen performing such work and no payment therefor will be made but where rules, agreements, interpretations or practices require payment to yardmen under conditions stated therein for coupling or uncoupling air, steam and signal hose, such rules agreement, interpretations or practices shall be changed to provide for the payment of only 95 cents." Now they had the rule, but incidentally that is not so strict because using the word trainmen, there is trainmen, brakemen baggage masters, switchmen——

Q. At any rate you see nothing in this award proper that would suggest anything about the award being about roadmen? From what you just read?

A. I just read this one paragraph.

Q. All right, do you know anywhere, other than that, that would go to show that the road meant to eliminate yardmen?

A. Yes, it is my understanding that the Railroad was supposed to eliminate the arbitrary pay for coupling and uncoupling air hose where a man was already on duty and that——

Q. That is, of course, what you think?

A. I don't see why they wouldn't give it to one group as well as the other.

[fol. 173] The Court: Q. Anything else Mr. Myrick?

Mr. Myrick: Yes a few more questions.

Q. Mr. Collins do you have the original thirty days notice that they gave you for the demand with you?

A. Yes, I have it in my file.

Q. Do you have any objection to it being offered, if you find it?

Mr. Miller: No, we have no objections if we can find it.

Mr. Myrick: Do you have the original, John?

Mr. Miller: What was that?

Mr. Myrick: The original thirty day notice that we gave for this demand that we made.

Mr. Miller: We have no objections.

Mr. Myrick: In other words, the reason why I am doing that I will offer my copy if the original is not in existence.

Mr. Miller: You could file the copy we surely would have no objection to that.

[fol. 174] Mr. Collins: That would be your copy.

Mr. Myrick: Will you see if you can find your copy of the original? Your Honor, I have got one more line of questioning and I will be through.

Mr. Myrick: Item number nine?

Mr. Collins: All of it, Item number 9 of the entire docket.

Mr. Myrick: Is this the correct copy of what was sent you?

Mr. Miller: As a point of clarification what is he looking at?

Mr. Myrick: This is the original thirty day notice we sent, we tendered under the railroad Labor Act asking for this money.

Mr. Miller: Back in 1952?

Mr. Myrick: That's right.

A. I think this is the same thing, I would like to verify it.

[fol. 175] Mr. Myrick: All right, sir, I don't want to tie you down to it, I just wanted the original to file with the record.

The Court: Go right along Whelby.

Mr. Miller: Suppose you just read it in the record subject to——

A. I will let Mr. Parham Clark check it.

Mr. Myrick: All right we will let him check it while we finish here, it won't take but just a few minutes.

Mr. Miller: Is there any objections to these gentlemen coming in or——

The Court: It is all right. Tell them to come on in.

Mr. Myrick: I have no objections.

Mr. Miller: If we are not going to use them they ought to come in here.

Mr. Myrick: I don't think I have any rule——

The Court: I didn't mean to rule them out this morning. Tell them to come on in?

[fol. 176] Mr. Myrick: John, I believe that you agreed to stipulate in the agreement that you filed before Judge McWhorter and you further, making stipulations to that?

Mr. Miller: Yes.

Mr. Myrick: And you further agreed that I could put in the record Judge Atkinson's opinion so that the case would speak for itself?

Mr. Miller: Yes. While we are on that I believe you also agreed in your stipulation that the copy of majority of opinions the Supreme Court of Georgia has set out in my petition is the correct copy.

Mr. Myrick: Yes. I didn't read it.

Mr. Myrick, Sr.: That's the opinion. The whole opinion is in there.

Mr. Myrick: I am pretty sure it must be right.

Q. Mr. Collins I have got one further line of questioning I want to ask you. I would like to read you from Title 45, Section 155 of the Railway Labor Act,——

"In a case in which any controversy arises over the meaning or application of any agreement reached in mediation under the provisions of this chapter either party the said agreement or both may apply to the mediation board [fol. 177] for mediation board for interpretation or application of such agreement. Said board shall upon receipt of such request notify the parties of the controversy and after hearing of both sides give its interpretation within thirty days." In the event that was the——

Mr. Collins: Would you mind reading that again?

Mr. Myrick: Suppose I let you read it yourself and then I will ask you questions about it.

The Court: He is not supposed to interpret that.

Mr. Myrick: I want to ask him questions about what is he willing to do. He is a lawyer I understand.

The Court: He is not supposed to interpret it.

Mr. Myrick: I know, but he will know how to answer my question if he is a lawyer. I am not asking him to interpret, I am just asking him if he is willing to do something.

The Court: All right.

What are you going to ask him would he be willing to do what now?

[fol. 178] Mr. Myrick: If he would be willing to submit it to that Board. His controversy under that section?

A. I don't think this part has anything to do with it.

The Court: That is what I was afraid of, that you were going to get into an interpretation. Well let's get on.

Mr. Myrick: In other words, you are unwilling to do it because of the reason which you said?

Mr. Miller: Your Honor, I don't understand the question——

Mr. Myrick: The question is—is the railroad willing to submit this controversy to the Mediation Board under Section, Title 45, Section 155.

The Court: Somebody has it before the mediation board

because the man came down here. There was no question about that.

Mr. Myrick: This is the provision which the interpreter used.

Mr. Miller: The Mediation Board or the Adjustment Board?

Mr. Myrick: The Mediation Board.

[fol. 179] The Court: That man has been down here hasn't he?

Mr. Myrick: Yes, sir, but he did not attempt to interpret this agreement. He acted in accordance with the first section of that——

Mr. Collins: The agreements you are talking about is the agreements made by the Mediation Board.

The Court: He wouldn't know. Get his lawyer here and ask him about it. Let's get on.

Mr. Myrick: Well, sir, we might get somewhere on it. I can't ask him a question about some of these documents——

The Court: I don't think you can ask him any question on law, I think that is up to me to determine that.

Mr. Myrick: All these agreements that were entered into on May 25, 1951 and the agreement to submit the matter to the Arbitor appointed by the President of the United States would reach the mediation under this agreement won't it?

The Court: Do you know that, sir, or don't you?

A. I don't know.

[fol. 180] The Court: That is for a lawyer to determine Shelby, I think.

A. When we give the power of attorney why I washed my hands of it.

Mr. Miller: We will agree to the accuracy of the document.

The Court: Is that what you want, Shelby?

Mr. Myrick: Well sir, I just wanted him to answer the question if he could. Whether this agreement was reached through mediation and he——

The Court: He said he didn't know.

Q. Would you be willing to submit it to the Mediation Board if it did have jurisdiction to interpret this agreement?

A. Yes, we have been before them twice.

The Court: All right. Anything in rebuttal?

Mr. Miller: No, sir.

The Court: All right, anything else for your side now?

Mr. Myrick: No, sir.

[fol. 181] The Court: All right, you rest.

Mr. Myrick: John, first could you tell me what was stipulated with regard to what you filed in Superior Court?

Mr. Miller: Let's get off the record and let me read it and see.

(Note. Off the record discussion)

Mr. Myrick: Judge, I will be through here in about twenty minutes.

The Court: Unless you want to come back in the morning?

Mr. Myrick: No, sir, I will be through here in about twenty minutes.

The Court: It would suit me all right if you want to come back in the morning.

Mr. Myrick: I am waiting on John to find out what he is going to stipulate.

Mr. Miller: Oh yes, I was waiting on you. All I am doing is I am trying to find out the exact date——

[fol. 182] Mr. Myrick: Well that is what I thought you were doing, while he is doing that may I read into the record the Item Nine which Mr. Collins has agreed is a correct copy thereof?

The Court: Suppose you give it to her and she can put it in the record easier.

Mr. Myrick: You can just write it down because he has to have it back. It has got a lot of other things in it.

(Off the record discussion closed.)

Mr. Myrick: This was a thirty day notice under Section 6 of the Railroad Labor Act of the Central of Georgia Railroad but—by the Brotherhood Trainmen. It was submitted by B. G. Byington who is the General Chairman of the Brotherhood to W. J. Collins, Assistant to the Vice-President. An Amendment to the Article 41 "coupling and uncoupling of air and/or steam hose, etc. Foreman and

switchmen employed in the yards and trainmen employed on switch local assignments and/or local freight assignments will be paid an arbitrary of $1.50 per day or trip regardless of miles or hours involved in the day or trip."

The Court: What is that you are reading now?

Mr. Myrick: This is the notice we gave them that started the controversy.

[fol. 183] The Court: Oh, the notice.

Mr. Myrick: (Continuing reading the notice) "as a condition of this arbitrary allowance said employee may be required to couple and/or uncouple air brakes signal and steam hose, couple and uncouple vestibule curtains."

The Court: All right. That is the notice that you all gave them?

Mr. Myrick: The formal notice required by——

The Court: There wasn't any objections, I mean——

Mr. Myrick: No, sir, but it doesn't show. It is our contention that is what the issue was——

Mr. Myrick, Sr.: Let me understand this, you said in this record Judge Atkinson proceeded to try this case on its merits?

Mr. Myrick: John agreed that I could put it in the record.

Mr. Miller: I only agreed to the accuracy of it. I haven't agreed to the relevancy of it because he states the Supreme Court has ruled that he has no jurisdiction.

[fol. 184] Mr. Myrick, Sr.: All right. He found the case against you all on the merits of this contribution and that the Cheney award is not binding, did he not?

Mr. Miller: That is right and you said he didn't have jurisdiction to decide and that is why we went to the Adjustment Board.

Mr. Myrick, Sr.: And he decided against you.

The Court: There is no question that Judge Atkinson Superior Court of Chatham County decided against the Railroad and then they took the case up and——

Mr. Miller: Your Honor, we show that in our pleadings.

The Court: That is what I said, that's all in the pleadings, and they took the case up and they a cross bill, did they file a petition before Judge Atkinson stating that he had jurisdiction?

Mr. Miller: They demurred, general demurrer.

The Court: Well both sides have agreed here today that the Labor Court had jurisdiction, didn't you?

Mr. Miller: Yes, sir.

[fol. 185] Mr. Myrick: I want to offer this in evidence. Mark it defendant's Exhibit.

The Court: Mark it Exhibit C?——

Mr. Miller: Defendant's Exhibit 2, I believe it is.

The Court: Anything else now?

Mr. Miller: I would like the record to show regarding that exhibit, that we admit to it- accuracy but do not admits its revelency. We deny its revelency.

The Court: Why isn't it revelent?

Mr. Miller: Sir?

The Court: Why is it not revelent?

Mr. Miller: To the extent that it is a ruling over the merits of the case of the State Supreme Co-rt has held that it did not have jurisdiction to rule on them. And as to the question of jurisdiction he was reversed.

Mr. Myrick: According to the opinion it shows what he said about both and you have alleged in your petition what he did in that item.

[fol. 186] The Court: Well you all both agreed for it to go in, is that right?

Mr. Myrick: He agreed for it to go in with that exception.

Mr. Miller: No. I don't agree for it to go in, Your Honor. I don't think——

The Court: Well, I will admit it temporarily.

Call my attention to it later. Anything else?

Mr. Myrick: John, what were you going to stipulate with regards to——

Mr. Miller: Oh, here again I am doing this just to save the difficulty of proof. I do not agree to the revelency or the theorality of what I am about to stipulate. It is stipulated purely for the purposes of saving the defendant the trouble of trying to prove it.

The Court: Well, what is it?

Mr. Miller: It has to do with the petition, Your Honor, that the Central of Georgia filed with Chatham Superior Court. It was considered by——

[fol. 187] The Court: I don't see any need for all of this. I said from the start and still think, I have spent a long

time here today with both sides. There is only one question in the case that I have got jurisdiction to grant an injunction, and you all have got everything in here from the birth of the Lord to the death of the devil today, and I don't see it. You could have got through with this thing in thirty minutes this morning. Both sides, one isn't any different from the other. Go ahead with it.

Mr. Miller: This is what they have reference to Your Honor, that on some time in February, on February 15, I believe it was, we presented a petition for a temporary restraining order, the Central of Georgia filed—requested a temporary restraining order from Judge McWhorter, Superior Court of Chatham County to restrain the defendant from striking pending a decision of this controversy by the National Railroad Adjustment Board. Judge McWhorter granted that restraining Order but requested that we not file it until the following morning. That was about 2:00 P. M. Shortly thereafter we received word from the Mediation Board that this strike had been postponed pending mediation thereupon. I advised Judge McWhorter of this and nothing having been filed in the case he rescinded his order.

The Court: What does that have to do with this case?

Mr. Miller: I don't know, sir.

[fol. 188] Mr. Myrick: I will show you, Your Honor, in just a minute when I conclude my evidence.

The Court: All right. Well I will admit it temporarily subject to objections. Go ahead.

Mr. Myrick: Mr. Chester will you take the stand, please.

Direct-examination.

Mr. L. E. Chester, witness for the defendant, sworn in, testified on direct Examination.

By Mr. Myrick:

Q. State your name?
A. My name is L. E. Chester.
Q. What is your position with the Brotherhood?

A. Vice President of the Brother*hood of* Railroad Trainmen.

Q. Mr. Chester, are you the Chairman who gave notice to Mr. Collins to changing the rule about receiving pay for coupling and uncoupling air hose?

A. No. The General Chairman gave the notice and properly so. I came into the picture after the General Chairman was unable to reach a settlement on the question.

Q. Were you present in Atlanta, Georgia.

A. Yes, I was.

Q. For what reason were you there?

A. To meet the mediator for the purpose to see if he could mediate this controversy.

[fol. 189] Q. Did that Mediator ever suggest or offer to you the services of an arbitrator?

A. The Mediator did not offer arbitration at any time.

Q. No form of proffer?

A. Perhaps we discussed in a loose sort of way from time to time but no form of proffer of arbitration was given.

Q. When did you consider the efforts of the mediator to be at end?

A. I considered them to be at end some thirty — after we had been notified of this injunction, about 1:30 on Friday when I called the mediator and he told me he had just dispatched a wire to the Mediation Board eliminating their handling the case and all because of the telephone conversation to the Secretary of the Board who had told him he would then dispatch a wire to the President of our Organization and to Mr. Collins, taking the case out of their hands.

Q. And that was about 11:00 on Friday, the 25th?

A. No, it was about 1:30 on Friday the 25th.

Q. Prior to that time—do you have the notes which you made that morning?

A. Yes. I always keep notes on these things.

Q. As far as you were concerned were you still mediating the question or were you going to call a strike that night, or were you still mediating?

A. As far as we were concerned the case was still in mediation. There had been talk on Thursday afternoon of the Mediation Board turning them a loose, so to speak and the Mediator had told me that he had talked to Mr. Collins

and told him that it looked like he was going to have to get out of town and surrender the case. He said Mr. Collins [fol. 190] asked him to wait until 10:00 o'clock Friday morning. Give him time to think it over. We waited on Thursday night thinking there might be a break and on Friday morning——

Q. What occurred on Friday morning, state that please?

A. Well on Friday morning I hadn't heard from the Mediator at 10:00 o'clock so I called him about 10:10. He said he had called Mr. Collins and Mr. Collins had called him and Mr. Collins at that time told him to give him thirty minutes longer and the Mediator suggested that I call back about 10:40 and see what it was about, and I called back about 10:40 and he said he hadn't heard anything, but he didn't feel that he should call Mr. Collins, he later called me and said he had called Mr. Collins' office and Mr. Collins wasn't available. His staff told him he was in the President's office, and he said that he had quarreled with the people down there, and asked that they have Mr. Collins call him when he came out of the President's office. In the meantime we went out for lunch and came back and met the Marshal and these papers was served upon us. It was then that I called the Mediator, having been out of the room a while to—that is when the Mediator told me that Mediation had then and there come to an end. That is the first notice the Organization had that the Mediation Board had relinquished their jurisdiction.

Q. Mr. Chester did you sign any of these agreements?

A. Yes, I was a member of the Wage Committee and my signature does appear on each report of the Wage agreements.

[fol. 191] Q. Now, I will ask you this. Does this agreement, right here, it says "In settlement of differences as set forth in Docket Case No. A-334 of the National Mediation Board, is that where you agreed to all of these things?

A. That is the Mediation agreement. It was signed with members of the Mediation Board closing this dispute out. This dispute had been pending for a good many months. That is a mediation agreement.

Q. Everything in here was reached with the assistance of the Mediation Board?

A. That is correct.

Q. Including the agreements to submit to controversy of whether or not you should be paid for coupling or uncoupling the air hose as the record pointed out awhile ago?

A. That is correct. Those agreements were reached in the office of the Mediation Board in Washington with the assistance of the Board.

The Court: What was the name, what is that board up there that both sides contend has jurisdiction of this case?

A. National Railroad Adjustment Board. That is in Chicago.

Mr. Myrick: Your Honor, may I talk off the record here for a minute? I would like to explain that.

(Note. Off the record discussion)

[fol. 192] The Court: I don't want you to explain anything but I just want to get that name.

Mr. Myrick: I was just going to——

The Court: I thought you said "explain that".

Mr. Myrick: Both sides agreed it had jurisdiction. Now there are two separate contentions here. We are asking for one thing and they are asking something else.

The Court: I know all that, but I just wanted to ask you gentlemen whether the National Railroad Adjustment Board did not have jurisdiction over the controversy.

Mr. Myrick: But the question is—is what is the controversy?

The Court: I know all that, I am not getting at that. I am not asking for that. The only thing I asked him was a simple question Shelby, the name of the Board upon which both sides say had jurisdiction of this question and he said the National Railroad Adjustment Board. I just wanted to get that Board, in giving my opinion I just wanted that.

Mr. Myrick: There is a mix up about that. I could explain it to you if you want me to.

[fol. 193] The Court: Explain to me about what?

Mr. Myrick: About which one had jurisdiction. The Mediation Board or the Adjustment Board.

The Court: I know that.

Mr. Myrick: Sir?

The Court: I know that. But what I was getting at was in my own mind I know what—aside from the record I don't see why you all dip into all this stuff. That hasn't got anything to do——

Mr. Myrick: All right, sir. I am sorry.

The Court: But what I am getting at—is the only thing I am getting that name for is because I know what I am going to decide, I think, and I was getting that name down in my mind before I rendered my decision.

Anyth-ng else gentlemen?

Don't let that get on the record—you can cut that off.

[fol. 194] Cross examination.

By Mr. Miller:

Q. Mr. Chester on Friday morning were you still willing to negotiate with the Mediator?

A. Well we're still willing to negotiate. We were in mediation. We thought we were still in mediation. We wouldn't strike and never would have struck as long as the Mediat-on Board had jurisdiction and we were greatly surprised when this action was taken, because we always thought they preserved the "status quo".

Q. Did you tell the Mediator that you would not have anything more to do with the mediation services?

A. No, we did not do that, we were right there ready to do business.

Q. Did you tell him that you were going to withdraw the men from service? Friday night?

A. No, we frequently told him as we have told Mr. Collins, that the men would be withdrawn if we could not reach a settlement. We had not set any particular date.

The Court: Let me ask you something. You said something just then. You said you told them if it wasn't settled that you would withdraw your men. You would call a strike then.

A. Yes, if an agreement was not reached. If we could not settle this question.

The Court: Anything else now gentlemen?

[fol. 195] Mr. Miller: Yes, sir. Just a question.

Q. Mr. Chester did you agree with the Mediator to arbitrate this dispute in this last mediation?

A. No. Arbitration was not proffered.

Q. You said it was not proffered. Now that is a technical term. Was it discussed between you and the Mediator?

A. Now, I am not positive about that. I think we had some brief discussion of the possibilities of it.

Q. Well, do you agree to arbitrate the problem now.

A. I would not agree to arbitrate the question we propose. I would arbitrate the question Mr. Collins proposes. I'd say there is a difference. Now that is something that as a layman I haven't been able to get out here on the table. The question Mr. Collins has gone to the Adjustment board with, we are certainly agreeable to the adjustment board deciding that which is arbitration, but the question that we submitted, that is a request for a new rule, that is the thing that——

The Court: What you all want is a new rule.

A. That is right.

The Court: That is what I gathered by the petition.

A. That's right. We served notice under the Railroad Labor Act for a new rule.

[fol. 196] The Court: And that is now pending before the National Railroad Adjustment Board.

A. No, sir. That is not.

The Court: Didn't—what did they decide on the new ruling—what did they decide about that?

A. It has been declined, we are still in negotiation for it, and in the meantime Mr. Collins goes to the National Railroad Adjustment Board asking for an interpretation of the Cheney Award.

The Court: What you want—you asked for a new ruling on the Cheney award, and they turned it down isn't that right?

A. We don't mention the Cheney award. We asked for a new rule. We asked for a rule that will pay yard men and road men on the Central of Georgia Railroad—an arbitrary.

The Court: I see, well, that is up there.

A. That is not there. That is not before the Adjustment Board. That is the thing we are handling around down here trying to get Mr. Collins to agree to. This rule.

The Court: But if he agrees to that he just agrees to everything hasn't he? He agrees to pay you what you want hasn't he?

[fol. 197] A. That's right.

Mr. Miller: No further questions, Your Honor.

Mr. Myrick: For the purpose of the record I would like to introduce this. I t-ink that was the second amendment to your original petition.

Mr. Miller: I don't object to that.

The Court: Well then both sides are closed then.

Mr. Myrick: (To the Reporter) Mark that Defendant's Exhibit.

Mr. Miller: I do have one question Your Honor. I want to call Mr. Collins in rebuttal on one point.

The Court: All right.

Mr. Miller: Mr. Collins just answer where you are.

The Court: This is a Rebuttal now.

Mr. Miller: Mr. Collins when did you consider for all practical purposes mediation was terminated in this case? [fol. 198] Mr. Myrick: Your Honor, I object to that because it calls for a complete——

The Court: No, I think—I have ruled against it. Go ahead. He said for all practical purposes.

Mr. Myrick: If you leave those words out——

The Court: Just one minute Mr. Myrick, I ruled he can answer it. Go ahead.

A. Thursday night. Thursday afternoon late just before 5:00 o'clock Mr. Switzer told me that there was nothing else to it, that we either had to face a strike or give these fellows what they want. That he could not hold any longer. That they had been talking about Wildcatting. But he had told them nothing was ever settled in that way, but that they could not hold them any longer. He said I can't hold them any longer.

The Court: That was admitted without objections.

The Court: Gentlemen, you don't want to argue this case do you?

Mr. Myrick: Your Honor, I want to point out one more thing.

[fol. 199] The Court: I have already got my mind made up.

Mr. Myrick: I know, but I want to point out one more thing to you sir.

The Court: Well go ahead.

Mr. Myrick: What I want to point out to you is that we think the evidence shows that the Railroad did not exhaust their administrative reasons with the Mediation Board and under Section 108 is not entitled to an injunction and I would like to read you the Section.

The Court: That is what you read me this morning.

Mr. Myrick: No, sir, I did not read that—this is entirely different.

The Court: All right, go ahead.

Mr. Myrick: This is Title 29, Section 108. "It is our contention that under this evidence the Railroad did not exhaust their administrative remedies which they have alleged they have with the National Mediation Board", now I am not talking about the Adjustment Board. "No restraining order or injunction relief shall be granted to any complainant who has failed to comply with any [fol. 200] obligations composed by law which is involved in a legal disputed question, or had failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation of voluntary arbitration."

The Court: What do you say to that?

Mr. Miller: Judge, I say that even if that is applicable to a part of the Norris-LaGuardia Act, we had complied with that requirement because we had mediated and the mediator had told us there was nothing else for him to do and he wanted to go back on Thursday night to his home and close out the mediation.

The Court: All right. You gentlemen don't want to argue the case do you?

Mr. Miller: I think the argument is on the motion, Your Honor.

Mr. Myrick: Your Honor, that is my other argument, but I don't think I want to reiterate anything else I have already said. That is a separate argument.

The Court: Well Gentlemen, I am sorry, I have tried to call the case, and if I was a little bit impatient with any of you all, the witnesses, maybe I was a little impatient to get through with it but I wanted to give all of you a fair hearing and I have tried to do it. What I am [fol. 201] going to do I think its determined, that this matter should be determined by the National Railroad Adjustment Board I think that is correct, I think you both practically agreed to that. Second I want to hold this matter in statute quo just as much as I can. The Railroad Company is solvent and the bond is solvent. Who is on your bond?

Mr. Miller: The American Insurance Company—The Globe Indemnity.

The Court: The Insurance Company is on your bond. Now if you have a cause of action for these reasons you have a solvent railroad and a solvent bond and if this Board determines this case that the defendant against the Railroad you have a bond on the Railroad Company to get your money out of therefore I am going to make the injunction permanent. And you can prepare the Order——

Mr. Myrick: Your Honor. Are you going to issue a temporary restraining order or are you going to issue a permanent injunction?

Mr. Miller: Your Honor this is a hearing on a motion for a preliminary restraining order.

The Court: That is what I meant. What did I say permanent, I meant temporary, of course. But you can fix [fol. 202] your Order Mr. Miller and I want the order to fully state the statements of fact and conclusions of law.

Mr. Myrick: Now Your Honor, there are two questions that since you are deciding that that I wish to take up here, one being, we contend that your order can not cover Roadmen. It can only cover yardmen.

The Court: What do you say to that?

Mr. Miller: I say, Your Honor, that your Order can cover only those involved in the Cheney award and I think

that your Order should be worded so as to apply only to those involved in the Cheney award.

The Court: Does the Cheney award take both of them, or just one of them?

Mr. Miller: It is my understanding Your Honor that it covers both of them but we will work the restraining order so as to apply only to those governed on the controversy submitted to the National Railroad Adjustment Board.

The Court: All right.

Mr. Myrick: No, sir, the Cheney award is final and binding. If the Cheney award deals only with yardmen it can have nothing to do with roadmen.

[fol. 203] The Court: I want to get settled all those people affected by the Cheney award.

Mr. Miller: That is exactly the way I will word the order.

Mr. Myrick: Their statement of their claim before the Adjustment Board shows only yardmen.

The Court: I want to include in that order everybody who is covered by the Cheney award.

Mr. Myrick: All right. The second thing is I want to point out to you is the bond they put up is totally inadequate. The bond is totally inadequate to protect my clients. For this reason, the bond has no provisions in it that if we win this claim before the adjustment board that we will get pay from the date of the filing of this suit, between that date and the date of the filing of this suit. Second, even if the bond did have any such provision the bond is for the sum of $40,000. and the plaintiff he claims it would run in the neighborhood of $37,000 a year.

The Court: If you want an increase in the bond I will give you an increase, the only reason you got a solvent Railroad here is you after them first.

Mr. Myrick: What about the terms of the bond?

[fol. 204] The Court: Well what you would want would be an increase in the bond.

Mr. Myrick: Yes, sir.

Mr. Miller: I don't object to that. I don't think it's material but I won't quibble on that.

The Court: What were you saying Mr. Myrick?

Mr. Myrick: I am saying that the conditions are not such that if we recover——

The Court: Now listen to this, the conditions of the bond are not such——

Mr. Myrick: —are not such that if we recovered and won the decision before the adjustment board that we could get this pay from the period of the date of the filing of this suit and the date of that decision. There is no protection there under the conditions that that bond is put up.

Mr. Miller: The bond would be to protect you for any damages you might sustain by virtue of this appeal. What your damage would be would depend on what rule——

[fol. 205] The Court: If you all can't get together on the bond I will pass it, but I want you protected.

Mr. Myrick: The bond does not protect us on that right now.

The Court: Well you get a bond that would protect them.

Mr. Myrick: As far as that goes if they are willing to pay us retroactively in the event of an adverse decision we could consent to this thing.

The Court: Consent to what?

Mr. Byington: If they give a bond and make it retroactive we would let it stay in this Court five years.

The Court: Well what about that now—if you give a bond——

Mr. Miller: Well, Judge, let me see if I can state the problem as I see it now. Let's assume the Railroad adjustment Board ruled that the Cheney Award was not permanent and was subject to negotiation after the date of the filing of their suit. Before we would know what these employees would be entitled to after the date of the filing of this suit, we would have to know what agreement was reached between the Railroad and these parties as to payment. Now we would certainly be willing to [fol. 206] post a bond which will indemnity the defendants of any damage they might sustain by virtue of this injunction being issued or the appeal being taken or anything else pending upon the decision, but I don't think that we ought to be required in any bond to contract with these parties that any rule we make would be retroactive.

The Court: Well here is what I was getting at. You have got the Railroad to fall back on, you have got a Railroad——

Mr. Myrick: Your Honor, but we—the bond doesn't have anything to do with that question under its present condition.

The Court: Suppose in other words, suppose the Railroad Adjustment Board would say you were right, then you would want to get your money which was owed you?

Mr. Myrick: Yes, sir.

The Court: Then why couldn't you file against the railroad company?

Mr. Myrick: Because under the terms of the bond——

The Court: I don't mean under the bond, I mean against the Railroad Company by suit. In any suit you have got [fol. 207] to prove it (Note: The Court, to the Reporter): You needn't take this down, we are just talking). You have got to prove your damages.

Mr. Miller: Whether or not it would be retroactive would be a question of negotiation and if we are paying you on a question of strike, I don't -now what would come out if we lose this case.

Mr. Sullivan: Unless you agreed that when it was negotiated, it would be retroactive, you have got no case before them. The assessment of damages would be interim.

The Court: You mean from the date you filed the suit?

Mr. Sullivan: Yes, sir.

Mr. Miller: You do not have at this stage of the game, no, but you do when the rule is finally awarded. We don't know—if there is a rule or not.

Mr. Sullivan: You do if you agree to make it retroactive, yes, unless you do we don't have.

Mr. Miller: That's when the subject should be decided, when this other question is decided.

[fol. 208] The Court: How could you prove it now?

Mr. Sullivan: You could require them to put up a bond which would——

The Court: You don't have to take all of this. (To the Reporter.)

Mr. Miller: Would you enter the date of the filing of the suit?

The Court: You may have something there, John.

Mr. Myrick: Your Honor——

The Court: Well, why shouldn't it be retroactive? They are entitled to their money. They should have it. From the time of this Rule.

Mr. Miller: What we are willing to do Your Honor, is this—keep a record as we have incident--ly since this issue first came up, a record of coupling and uncoupling hose and in the event a rule is finally decided upon it will compensate all the coupling and uncoupling of air hose, and then the question of whether it would be retroactive is decided if it is retroactive we will have a record——

[fol. 209] The Court: I was asking why that couldn't be decided now?

Mr. Miller: As a matter of fact, it can be decided now.

The Court: I want to protect the Railroad and I want to protect these people too.

Now what I am getting at is this—Why couldn't the order state that the bond should be given—(to the Reporter) You needn't put all this down.—why a bond should be given making it retroactive in case this matter is settled?

Mr. Miller: What ever rule is finally decided upon, retroactive to the date of this order.

The Court: Or we could take the date that this suit was filed.

Mr. Miller: From a legal standpoint, I don't see why it couldn't be.

The Court: I don't see any reason why it shouldn't be because the whole thing in this case—suppose you all get together on that order, now I think that is fair,—to go ahead and pass an order that the amount should be—to be determined by this board then the order should be retroactive to the date of the filing of this petition. I think that is fair.

[fol. 210] Mr. Miller: As I understand Your Honor, (illegible). Word the decree so that the conditions will be that we post a bond which would indemnify the defendant for any compensation that they might have lost from the

date of this order to the date that the rule is finally agreed upon.

The Court: I think that's right.

Mr. Myrick: At the rate agreed upon. They might not agree on the $1.50 we asked for, they might agree on something else.

The Court: I think that's fair.

Mr. Collins: How much would the bond be?

Mr. Myrick: Well I think from the testimony here, they testified about $37,000 a year.

Mr. Miller: I think that's about right because the bond we got posted now is $40,000. carrying for a year.

The Court: Let's get to a close now.

Do you want it for a year or two years?

[fol. 211] Mr. Myrick: Well I think a $100,000 bond is acceptable?

Mr. Miller: All right, with a provision—Judge that brings up another question at this time, that the temporary

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The Court: Mrs. Strickland you can go ahead—No use keeping this lady waiting——

Mr. Miller: restraining——

The Court: Put in the Order that it is retroactive after the—in the event that the National Railroad Adjustment Board decides in the plaintiff's—in the Defendant's favor. Retroactive as to the amount that they should recover. And then you submit it to Shelby. If you can't agree on——

Mr. Miller: Judge there is only one other problem and that is of course, that your temporary restraining order expires tomorrow night. I was wondering if it would be agreeable with the defendants to extend that until I have an opportunity to draft these findings and present them to you, I am afraid I could not do that by tomorrow night.

Mr. Myrick: You can present them Thursday?

[fol. 212] Mr. Miller: I would like another five days.

Mr. Myrick: I don't think it would take five days.

Mr. Miller: That depends on——

The Court: Well, there is no rush on it——

Mr. Miller: I will endeavor to have it by Friday.

The Court: I may not be here on Friday.

Mr. Myrick: In other words I will waive it until Friday right now and if you want me to waive it any further you had better ask me about it.

The Court: I have to go up to Rome on Friday.

Mr. Myrick: Why can't you get that by Friday?

Mr. Miller: Well, I hope to be able to Mr. Myrick but I wouldn't if something else comes up. I will do the best I can.

[fol. 213] The Court: I know you will. I think you all got the question settled now.

Mr. Myrick: You going to make the findings or what?

Mr. Miller: I am going to propose them and submit them to you for your consideration. That is going to take time.

Mr. Myrick: Of course, now, as far as the order is concerned I am not going to agree with any findings of fact that you might propose——

Mr. Miller: Well, how about writing me, or call me would be a good idea and I will let you look at them.

Mr. Myrick: All right.

The Court: You present them to him and then you submit them to me and if you have no objections—that will get it.

Mr. Miller: Judge I would like in this Order if you will, to extend it for another five days period.

Mr. Myrick: Five days is Friday, isn't it? In other words I consent. You can waive this thing by consent as I under-

[fol. 214] stand it, five day provisions. I will agree you have got to Friday and if Judge Scarlett is not here Friday, I will agree that you can have until next Monday. If you can, have it ready by Friday.

The Court: Let me ask you something—you all want this just among yourselves, is that right?

Mr. Miller: I think it would probably be better Your Honor, to have it in the record—because there might be some misunderstanding.

Mr. Myrick: Put that on the record, it is all right for me to go on the record that I agreed that the—that I will agree

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The Court: Mrs. Strickland take this down.

Mr. Myrick: By consent——

The Court: Both sides agree by consent—all right.

Mr. Myrick: That the restraining order entered on Feb-

ruary 24 by Honorable Frank M. Scarlett shall be continued until Friday, March 4th at 5:00 P. M.——

The Court: I don't think I am going to be here then. I think I am going up to Rome.

[fol. 215] Mr. Myrick: I will just make it Monday, Judge.

The Court: Make it Monday, that's better.

Mr. Myrick: Where will you be on Monday?

The Court: I will be in Waycross Court, but, you can get me——

Mr. Myrick: What is Monday?

The Court: Monday is the 7th.

Mr. Myrick: (Continuing with the order) Monday, March 7th at 5:00 P. M. at which time the order will expire.

The Court: (adding to the order) This Order to remain in full force until further order of this Court.

If it runs over I will just sign another order.

Mr. Myrick: But Your Honor, you can't do that—that is why he is asking me to agree with him on a time.

Mr. Miller: Judge under the law you can't just continue this order without consent of the defendants——

[fol. 216] The Court: Well you can get your order by next Monday.

Mr. Miller: In order words, I will try to get it before then——

The Court: You are not going to have any trouble with these gentlemen agreeing—That gives you a week from today.

Conclusion

PLAINTIFF'S EXHIBIT No. 1

IN THE SUPERIOR COURT OF CHATHAM COUNTY, GEORGIA, SEPTEMBER TERM, 1954

No. —

CENTRAL OF GEORGIA RAILWAY COMPANY

v.

BROTHERHOOD OF RAILROAD TRAINMEN, ET AL.

DECLARATORY JUDGMENT, ETC.

Now come the defendants in the above entitled cause, and generally demur to the petition of the plaintiff, and for grounds thereof say;

1. That the petition upon its face does not set out a cause of action.

2. That the matters and facts set forth in the petition fail to state a cause of action.

[fol. 217] 3. The petition shows upon its fact that the award of Referee George Cheney, Esq. was not forever binding.

4. The petition fails to state a cause of action, as it shows on its face that the matters and facts raised therein come within the purview of Title 45, Section 156 United States Code Annotated.

5. The petition shows on its face that this Court has no jurisdiction of the questions raised, and that the matters involved are within the jurisdiction of the Railroad Labor Board exclusively.

—— ——, Attorneys for Defendants.

DEFENDENT'S EXHIBIT NUMBER 1

May 25, 1951

Agreements

for

1. Wage Increases

2. Cost-of-Living Basis for Wage Rate Adjustments

3. Rules Changes applicable to Road Trainmen, Yardmasters, Stewards, etc. and for

4. 5-Day Work-week, and Interim 6-Day Work-Week applicable to Yardmen and Yardmasters.

[fol. 218] The remainder of this exhibit is not copies in this record for the reason that it is too voluminous and complicated.

Defendent's Exhibit Number 2

In the Superior Court of Chatham County, Georgia
Suit for Declaratory Judgment and Injunction
Central of Georgia Railway Company,

vs.

Brotherhood of Railroad Trainmen, Et Al.

Opinion and Judgment on General Demurrers Statement of the Case

Central of Georgia Railway Company sued the Brotherhood of Railroad Trainmen, Local Lodge No. 721 of the Brotherhood, Z. P. Logan, President, W. A. Nealey, Secretary thereof, L. E. Chester of Florida, Individually and Deputy President, and others, and alleged the Brotherhood, and unincorporated association of Cleveland, Ohio, is the accredited bargaining agent of the "Brotherhood";

That there are about four hundred and fifty (450) trainmen and yardmen employed by the Railroad Company who reside in Georgia, Alabama and Tennessee who are members, and defendants named in the petition are representatives of the class consisting of all the trainmen and all the yardmen employed by the Railroad Company who are members of the "Brotherhood."

[fol. 219] That in 1950, the Class 1 railroads of the United States including Central of Georgia Railway Company, and the operating Brotherhoods, including those mentioned in the petition, bargained for months on certain matters but failed to agree. The Federal Mediation Board was called in under the Railroad Labor Act, but failed to get the disputants in to accord. Then the President of the United States appointed an Emergency Board under authority of the Railway Labor Act, which made its findings.

The Brotherhoods declined to accept these findings, and asked the President to take control of the railroads.

On December 21, 1950 the disputants agreed upon a memorandum in which they set forth certain questions on which they would continue to bargain.

On May 25, 1951, they agreed upon wages, and rules applicable to road trainmen, yardmen, yardmasters, stewards,

etc., and for a five-day work week, but did not agree upon the question of "more than one class of road service" and "air hose coupling and uncoupling." As to these subjects, on the same day they agreed (plaintiffs' Exhibit "A") that the questions still in contest should be referred to a Referee to be appointed by the President of the United States and they agreed that "the decision of the Referee shall be final and binding on the parties, and shall become effective thirty (30) days from the expiration . . . of notice to the carrier and the employees' committees . . . of the decision, and each carrier shall make its election within such period in accordance with the saving clause provisions of the proposed rules".

[fol. 220] The Presdent appointed as Referee George Cheney, Esquire, who held hearings, and on August 1, 1951, released his award, which is in the Record by Amendment as Plaintiffs' Exhibit "D".

The Statement of facts and findings of the Referee on the questions at issue appear on pages 27 to 30 in the Referee's findings (Exhibit "D").

The case was argued and submitted on General Demurrer, to the Petition as amended.

There were two main questions involved, viz: (1) Jurisdiction of Subject Matter, and (2) Questions on the Merits of the case.

Questions to be Determined

The General Demurrer contains six (6) grounds; The fourth and fifth grounds deal with the question of jurisdiction of this Court over the subject matter. No question of territorial jurisdiction, i. e., venue, is involved.

Opinion of the Court Jurisdiction.

Counsel for the contending parties have dealt with the jurisdictional feature out of sequence, we will follow their order and will consider first the jurisdictional question as stated in the fourth and fifth grounds of General Demurrer.

The questions here raised are not novel but have several times been considered by eminent authority.

[fol. 221] The Georgia decisions according to Plaintiffs hold that in suits involving the interpretation or application

of agreements between a carrier and its employees, the Georgia Courts have jurisdiction.

Evans vs. L. & N- RR Co. 191 Ga., 395 Central of Ga. v. Culpepper, 209 Ga. 844.

Defendants' attorneys cite to us respectable authority to the contrary that this jurisdiction is exclusively in the United States Courts.

Steele v. L. & N. RR. CO., 323 U. S. 192, Green v. Obergfell, 121 F. 2d, 138, Order of Ry. Conductors v. Sou Railroad 70 U. S. S. Ct. 585, Slocum v. Delaware Ry. Co., 70 S. Ct., 577. The opinions of both Courts are impressive.

However, trial Courts of this State are bound to follow the State Supreme Court, until reversed or set aside and the Georgia Supreme Court having spoken last on the subject, we must hold with the plaintiffs upon the question of jurisdiction.

The Merits of the Case

It appears that a proper intepretation of the finding of Referee Cheney will control this case.

The agreement under which the reference to Mr. Cheney was had, provided (Article 3, of Exhiibt B), that the decision of the Referee shall become effective 30 days from the date of the Referee's findings, and each carrier shall make its election within that period in accordance with the saving clause provision of the proposed rules.

[fol. 222] For Rule see award of Referee Cheney (Page 30 of Plaintiffs' Exhibit "D"), viz:

"A new rule should be drafted and inserted in the principal agreement between the parties to this proceeding dated May 25, 1951, which should read as follows: "Rules, agreements, interpretations or practices which prohibit or restrict the use of yardmen to couple or uncouple air, steam and signal hose, shall be modified so that there will be no prohibitions or restrictions on yardmen performing such work and no payment therefor will be made but where rules, agreements interpretations, or practices require payment to yardmen under conditions stated therein for coupling or uncoupling air, steam and signal hose, such rules, agree-

ments, interpretations or practices shall be changed to provide for the payment of only 95 cents."

"Individual carriers may elect to accept this rule or retain their present rules or practices without modification, by so notifying their General Chairman prior to September 1, 1951, and if accepted the date of such notification shall become the effective date."

The entire finding of the Referee appears in Exhibit "D".

On September 1, 1951, the Assistant to the Vice-President and General Manager of the Central of Georgia Railway notified the General Chairman of the "Brotherhood" that his company rejected the proposed new rule with respect to yardmen coupling and uncoupling air, steam and signal hose in this language.

[fol. 223] "In accordance with this decision and award. you are hereby advised that the Central of Georgia Railway Company desires to and will retain its practices without modification with respect to Item (1) above."

Compare Exhibit Art 3 of Exhibit A. Letter from Central of Georgia Railway Company, Exhibit B. Last page of award of Referee Cheney, Exhibit D and Paragraph 12 of the petition.

In our opinion, the letter from the Central of Georgia Railway Company of September 1, 1951 (quoted above) takes out of the award of the award of Referee Cheney, all findings with respect to the coupling and uncoupling of air. steam and signal hose on the Central of Georgia Railway, and throws that subject back on its status occupied before the award.

It would be manifestly unfair to permit the Railroad to reject the award, as it affected those defendants, and then claim that a prior custom on this subject has become a part of the contract by reason of the Cheney Award.

The question at issue was unsettled before the award, and by reason of the Railroad's letter of September 1st, 1951 is still unsettled, in our opinion.

Final and Binding

The Court does not wish to leave an impression that it has approved the entire contract as written by Referee Cheney.

[fol. 224] Petitioner argues that the finding of the Referee is "forever binding", or is "to run indefinitely", and the rules established, as construed by plaintiff are to continue forever.

It has long been a rule in Georgia, and I believe, in most states, that employment contracts are to be limited as to time of duration and territory.

In *Bentley v. Smith* et al. 3 Ga. App. 242, Justice Russell in writing the opinion stated:

"4. A contract for permanent employment continues indefinitely and is terminable by either of the parties at any time."

To the same effect is *Green v. Obergfell*, 121 Fed 2nd 46. 138 A.L.R. 253, see page 284; and notes.

In *Stelling v. Richmond County 81 Ga. App. 571*, on page 576, the Court citing the above case stated:

"He alleges that he was a 'permanent employee'. This is perfectly consistent with his indefinite status for, in the absence of specific contract or legislative enactment, 'permanent' employment is indefinite, and may be terminated by either party at any time."

It is worthy of note that in Title 45, Section 158 (j) dealing with agreements to arbitrate and what such agreements shall contain, the following is provided:

"Shall provide for a date from which the award shall become effective and *shall fix the period during* [fol. 225] *which the award shall continue in force.*" (Underscoring added.)

We cannot follow plaintiff's claim that Mr. Cheney's award if "final and binding and not subject to change, *modifications or negotiation at the demand of any* party" (underscoring added), as claimed by plaintiff on page 12 of its Petition.

The position of petitioner does not appeal to this Court of equity, where a perpetual injunction is invoked that would hinder and impede occupational improvement, as well as being without law or sufficient facts to sustain it.

Judgment

The Court thereupon overrules the fourth and fifth grounds of General Demurrer, sustains the first, second, third and sixth grounds of General Demurrer and dismisses the case.

The Temporary Restraining Order granted May 25, 1954, is hereby set aside and revoked.

And It Is So Ordered.

This July 1954.

—— ——, Judge, Superior Court, E. J. C. of Georgia.

[fol. 226] At Chambers

Ten O'Clock A. M. Friday, March 4, 1955

Colloquy Between Court and Counsel

Mr. Myrick: Judge, as I stated a moment ago, for the purpose of the record rather than go all through this I will file this objection——

The Court: What is that, objections to the Order?

Mr. Myrick: Objections to the Order, sir.

The Court: Objections to my findings.

Mr. Myrick: Yes, sir, as proposed by Mr. Miller.

The Court: Well, let me see it just one minute. Objections to my granting temporary injunction order because of sufficient facts——

Mr. Myrick: That is why I said I was just going to file it.

The Court: I have already decided that——

[fol. 227] Mr. Myrick: I understand that sir, I am just filing it so that it won't appear that I am necessarily consenting to anything in here.

The Court: I don't think you have consented.

Mr. Myrick: All right, sir.

The Court: "Defendants strenuously object to the inclusion of roadmen in the decree" (reading from defendants's objections).

Mr. Myrick: That is one of the major issues that I wanted to discuss with you here this morning.

The Court: Get down to four, that's where you started. Waiting on the order. The other is just that I erred in making this——

Mr. Myrick: Well there are three major things I want to clarify and if you just consider that filed I think probably I can clear them up.

The Court: You have a copy, Mr. Miller?

Mr. Myrick: Yes, I gave Mr. Miller a copy last night.

[fol. 228] The Court: Down to four. Down to Four, that is ju[illegible] I erred in my determination the law in this case, isn't that right?

Mr. Myrick: Yes, sir. Now Judge the three major things that we have to consider here I will take them up one by one and we will cover each one as we come to it, if that is the way you would rather do.

The Court: Go right ahead.

Mr. Myrick: Now the first thing I believe Mr. Miller and I are pretty nearly in accord on and that was the question how the bond was framed. When I first saw these papers I did not consider that the bond and the Order calling for the bond met what the Court had instructed Mr. Miller to do. Since that time I submitted to him what I proposed would be in the order and would be in the bond as I understood this Court and I think Mr. Miller and I are in substantial agreement on that.

The Court: On the bond?

Mr. Miller: On the bond, yes, sir.

The Court: Well you all agreed on that——

[fol. 229] Mr. Myrick: Last night, I thought we were apart but we have gotten together since then. That is one of the three major issues that has been eliminated, since he agreed to the substantial language that I submitted to him.

Mr. Miller: It is my interpretation Your Honor that we have agre-d on the substantial language.

The Court: Well, if you have. I don't want to be bothered with it, if you have.

Mr. Myrick: Now the second major contention here is that he has included in the injunction not only yardmen but trainmen. Now you remember I pointed that out the other day.

The Court: In other words you want roadmen in there?

Mr. Myrick: No, sir. He wants both roadmen and yardmen in there. Now I understood Your Honor to say that you meant for this injunction to cover everybody that was

covered by the Cheney Award and that only. Now the q-estion is before the Court and I thought it would be better to raise the point——

The Court: I want to include everybody who interferes with this order—I want to include everybody who interferes with this order enjoining them from interfering with [fol. 230] the people under the present price. I don't care yardmen, or roadmen, or engineers or anybody.

Mr. Myrick: You mean whether or not they are——

The Court: I don't give a darn what you call them whether the roadmen, yardmen or what I just don't want them to interfere with this order relative to the strike or relative to the situation or whoever in abeyance that they—the question as to who gets the money for it.

Mr. Myrick: As I understand the petition, if I may go over this just briefly, the petition asks that we be enjoined only from seeking to negotiate or to strike to cause the Central to give us a rule which would require pay for coupling and uncoupling air hose. Now the plaintiff's contention in this case is that we can not do that for that the Cheney Award is final and binding. Now what the contention that I want to point out to you here is naturally they might want a whole lot of other things that I don't think——

The Court: Suppose I just give an injunction against the yardmen, the roadmen would come in and start to trying to get more pay—what about that?

Mr. Myrick: That's right, Your Honor. The question is what——

The Court: I am not going to let anybody go on strike, unless I have to.

[fol. 231] Mr. Myrick: Your order is not meant to cover anything but this one issue.

The Court: I don't want anybody that this order could cover—in other words, I want the situation to stand statute quo until determined by the mediation board, I don't care what you call it. I want everything in statute quo.

Mr. Myrick: All right, sir.

The Court: Because if I didn't I would leave it wide open. What is your contention, John.

Mr. Miller: Your Honor, as I see what Mr. Myrick is bringing out, he is saying that when the matter is submitted

to the Referee Cheney for decision that the only people involved in the Cheney decision is the yardmen. Now, he says that he wants it briefed so if the roadmen want to insist on the extra pay for this coupling that they be permitted to do so.

The Court: I couldn't do that.

Mr. Miller: Now, my position, Your Honor, is that back in 1953 when the Brotherhood made demands they made demand for arbitrary pay for pullman and switchmen and trainmen employed on local switch assignments and local [fol. 232] freight assignments so we take the position that anybody involved in this proposed rule that they demanded which we have submitted to the adjustment board should be restrained from demand in pay.

The Court: What I want to do is to hold the thing in Statute quo. I don't want to pass and give an injunction to the Yardmen and the roadmen strike. That would be foolish.

Mr. Myrick: Well, Your Honor, I know I don't agree with you, but I thought it only fair to the Court to point this out because if I appeal the case that would be one thing that I object to and I wanted to give the Court the opportunity of having heard from me on it first.

The Court: I am never critical of a lawyer who tries to argue his case.

Mr. Myrick: I know sir, but I think it is only fair to bring up the point right now before the Court and not wait and not say anything to you and then go before the Court of Appeals and bring it up.

The Court: In other words you contend the word yardmen under that decree would cover the roadmen?

Mr. Miller: Yes, sir, we contend the Cheney award so effected this demand of the employees in 1953 that they— [fol. 233] the employees should not be permitted to try to enforce their demands growing out of this rule case.

The Court: Well, I am going to stick with it.

Mr. Sullivan: May I ask you something?

The Court: Yes, sir.

Mr. Sullivan: I am Mr. Sullivan. The sole basis, Your Honor, is the Cheney award. The Cheney award applies to no one but yardmen.

The Court: I am apart from you on that, yes. I am with you on that Mr. Miller. I am just not going to pass up the yardmen and have the road men go on strike, that would be absurd as far as the order goes. What I am getting at, Mr. Sullivan, is to try to get this matter statute quo.

Mr. Sullivan: Certainly as far as the Cheney award is concerned that is the——

The Court: And this will go along in line with my contentions—In other words——

(Note—Judge answered the telephone)

[fol. 234] Mr. Myrick: Excuse me a minute Judge, I want to clarify in my mind what you said that Mr. Miller should put in this order. I understood that you mean for h-m to put in this order that the Cheney award covers both yard men and roadmen and therefore be enjoining both of them from striking.

Mr. Miller: I understand what the Judge means. The Judge explained why he feels the trainmen should be enjoined pending a decision as well as the yard men. He does not refer to the Cheney award.

The Court: That's right. I wouldn't say that the Cheney award does that because then that would leave it open for attack. I think you have got it covered. Your statement is clear.

Mr. Sullivan: Well Judge, I have another point.

The Court: That's all right. I am glad to hear from you.

Mr. Sullivan: As Mr. Miller said, my point has been well taken if the Cheney award applied only to yardmen, my point is the Cheney award does apply only to yardmen, particularly the order——

The Court: I have made up my mind on this. I didn't think so till you all came, but you base that on what you did. Now what was the next?

[fol. 235] Mr. Myrick: Now the third thing Judge is something that I did not get a chance to explain the other day and I don't want to leave any misunderstanding as to my position with the Court and I want the Court to fully understand and have it in the record as to what my position is on this point, I don't want to—the Court to think if I take the case on Appeal that I have said someth-ng that

is contrary. Now the question is this. You asked me the question the other day, did I agree that the National Railroad Adjustment Board had jurisdiction? You asked me that question several times. At first I said no, then you——

The Court: Then you said "yes". Then you came on down and didn't cover all together, you made an exception there.

Mr. Myrick: Now here's what I want to fully—if you give me about five minutes—outline what my position is on that.

The Court: That's all right—go ahead.

Mr. Myrick: My position is and I stipulated certain things and denied certain things the other day over the machine. One of the things that I denied was that the second amendment to the original petition in the Superior Court was not material. He said it was not a proper statement to this complaint therefore he did not have that attached to this suit. Now the second amendment, [fol. 236] I am not clear on this, but contained that document that I introduced in evidence either as my exhibit three or four. Now if that amendment is not a part of this suit my contention is that the suit would show on its face that the National Railway Adjustment Board would have jurisdiction. That's why I answered you "yes" for the purpose of a motion to dismiss. For the purpose of the motion to dismiss we contend that the National Railway Adjustment Board has jurisdiction.

The Court: In other words, what you are getting down there is this, that you didn't admit that the National Labor Board had jurisdiction, is that right?

Mr. Myrick: Yes, sir.

The Court: Well, I think——

Mr. Myrick: Wait a minute, wait a minute, I want to get——

The Court: What I think is this. I think at first, I understood you to say you did, but then later on you didn't. I thought you would come back so I wrote out a little something this morning that after I heard it yesterday that there might be some doubt about it, that you agreed to it. Here's what I wrote——

The defendant impliedly agreed that the National Railroad Adjustment Board has jurisdiction in this case by [fol. 237] the evidence submitted in this case including their claim that the National Railroad Adjustment Board had jurisdiction in an identical case in the Superior Court of Chatham County of Georgia referred to in this suit.

Mr. Myrick: No, sir.

The Court: Well, now, that is my understanding.

Mr. Myrick: In other words, I just want to finish what I have to say completely. Now for the purpose of the Superior Court case was heard only on demurrer just as it was heard first on motion to dismiss. Now on the face of the petition, on the face of both petitions it would appear that the Adjustment Board would have jurisdiction. Now, my contention is that after we introduced evidence the other day we proved by introducing the document known as the May 25th agreement, we proved that the submission agreement submitting the same to the Referee Cheney arose out of the services of the Mediation Board and I proved that by Mr. Chester whose signature is on this page. Now then, sir, that means proved by the evidence under Section 45——

The Court: This isn't what you—this is what I am deciding.

Mr. Myrick: I know that, sir, but I am just going to tell you what my contention is—I didn't get a chance to fully [fol. 238] answer that the other day. Having proved that by the evidence, it didn't appear on the face of the petition, now for the purpose of the motion to dismiss, but having proved that by the evidence it is my contention the Title 45, Section 155, should apply which reads as follows: "In any case in which a controversy arises over the meaning or application of any agreement reached through mediation under the provisions of this Chapter is party to the said agreement or both may apply to the mediation board, for an interpretation of the meaning or the application of such agreement."

The Court: I know exactly what you mean Shelby, but what I am getting at is this. What I am getting at is this. I am not saying you agreed to this, I am saying this is my opinion, in other words I am not saying you

agree to anything, I am eliminating that because if you say you didn't mean that why I am taking your word for it but it was my impression and the record shows that you had agreed the Mediation Board did have jurisdiction but if you said you didn't intend it that way, that's all right with the Court. But what I am deciding is this see—That the defendant impliedly agreed, you are not agreeing to this, this is what I am deciding, and I want you to put this on a separate sheet of paper so I can give it to them, when they leave here. You will eliminate that paragraph and put this, and now I know neither one of you are going to agree with me on it nobody up here, but this is what I am deciding,—The defendant impliedly agreed that the National Railroad Adjustment Board has jurisdiction in this case by the evidence submitted in this case including the claim of the defendant that the National Railroad [fol. 239] Adjustment Board had jurisdiction of an identical case in Superior Court in Chatham County, Georgia referred to in this suit.—Now that's my opinion, that isn't what you agreed upon. Because when you say you didn't say that I am taking your word for it. It is in the record and what you say, I am taking your word for it.

Mr. Miller: Judge, May I ask Mr. Myrick for a point of clarification as to his position?

The Court: Yes.

Mr. Miller: Are you taking the position that from the evidence shown in this preliminary hearing that the mediation board has jurisdiction and not the National Board?

Mr. Myrick: That is precisely my position. For the purposes of the motion to dismiss or demurrer your petition shows on its face that the Adjustment Board would have jurisdiction but when we got down to the evidence and proved that this Commission agreement arose out of the services of the Mediation Board it is my contention that under that evidence the Mediation Board and not the Adjustment Board has got jurisdiction of the controversy.

Mr. Miller: You are taking the position that if the National Mediation Board has jurisdiction over this matter the National Railroad Adjustment Board would not have? [fol. 240] Mr. Myrick: That is correct.

The Court: That is for you all to argue if you carry it up, don't see where——

Mr. Myrick: Now—sir, now, sir——

The Court: From what I can understand in this case, where both of you are protecting your contentions both of you are not losing a darn thing, if you win—if this Labor Board hasn't got jurisdiction, well then you win, you have got a bond——

Mr. Myrick: Well, may I explain that sir?

The Court: Yes.

Mr. Myrick: You understand that you can't write anything in the rule, in this order that they have got to give us this rule. They don't have to give us this rule. We may never get the rule.

The Court: What do you mean, rule?

Mr. Myrick: The rule—contract provision granting my client's this arbitrary.

[fol. 241] The Court: Well you have collective bargaining——

Mr. Myrick: If it comes down to collective bargaining they may never agree to it, so we are not necessarily fully protected but we are protected——

The Court: What do you mean, what you mean is this if the National Labor Board does decide on its merits, is that what you mean?

Mr. Myrick: No, any board, either board, that might have jurisdiction to decide the controversy, in favor of my clients. That still doesn't mean that we are going to get a rule.

The Court: Going to get a rule, what do you mean?

Mr. Myrick: Giving us this pay for coupling and uncoupling hose.

The Court: You may not get what you ask for but I think——

Mr. Myrick: No, sir, that is not the controversy that is before them, the controversy before them is whether or not the Cheney award is final and binding. They decide that and then we still got to get a, negotiate a rule with the Company——

[fol. 242] The Court: I never saw a case that would do that——

Mr. Myrick: The fact of the matter, it might.

The Court: You wouldn't have any trouble getting your money then.

Mr. Myrick: Judge, I would to make one request that in the event this record is written up that my explanation of what I said or didn't say the other day that I made this morning be included in the record.

The Court: Oh, man, I couldn't put all that in record?

Mr. Myrick: Well, I just made a short statement.

The Court: Short, you don't know how much you all talk. Then I would have to put his—I don't think that would be proper. Suppose you write what I told you off Mrs. Strickland. Any other objection to this?

Mr. Sullivan: Yes.

The Court: What else then.

[fol. 243] Mr. Sullivan: It is this, Your Honor, it is just good law to try the case on arbitration of the strike of the Federal Railway Labor Board——

The Court: Well, you all have been trying to arbitrate. I didn't bring this suit. They brought this suit is true but if they hadn't there would have been a strike, wouldn't there?

Mr. Sullivan: That will be the effect of it. That will mean there will be no more settlement on the basis of arbitration.

The Court: I don't think that at all. I can't follow you on that. This is just an individual suit. Suppose you copy that and give it back to me about the defendant. Give me that one short statement. But I couldn't put all that in the record. You have to protect yourself in the case, not carry it up to have all that, it will be a part of the record—not in my judgment.

Mr. Myrick: I meant a part——

The Court: Certainly, Certainly.

Mr. Myrick: Both of these things be heard in it. That is all I meant. I don't want you to put all that in, I just want my explanation in the record of the case. That is all I meant.

[fol. 244] The Court: You just copy that one note. You can go ahead and get that—we are going to talk now.

Mr. Miller: I'd like this in the record, Your Honor.

There is another one the question of jurisdiction here. You are taking the position from the evidence submitted in the hearing on this preliminary injunction that the National Mediation Board has exclusive jurisdiction. Now do you deem that the Mediation Board has exclusive jurisdiction to the excluison of any Court?

Mr. Myrick: Yes, to the exclusion of any Court until they determine it.

The Court: Okay now, suppose you copy that one thing. Anything else, I would be glad to—I don't want to be abrupt——

Mr. Myrick: No, sir, that is all——

The Court: I will put all that in the record. I thought you meant in this order.

Mr. Myrick: I didn't mean that.

The Court: I am sure I would put it in the record.

[fol. 245] Mr. Miller: Shelby, do you want to be heard on these other points?

Mr. Myrick: Judge, the most of them, some of them I think Mr. Miller agreed with me. He has got Savannah in there, and now there is one other thing I think maybe we can touch on here, I don't think it matters too much, but I would like to—Mr. Miller to state what his contention is by using the word. Throughout this proposed finding he uses the word the arbitor Cheney instead of the word Referee Cheney, now——

The Court: What now?

Mr. Myrick: Instead of the word the Referee Cheney. Now it is his contention——

Mr. Miller: That won't make any—the arbitor——

Mr. Myrick: I think it may—I think maybe he might think that might reinforce his position as this is common law award by using that word. If he had any reasons for using that word——

Mr. Miller: I think Shelby thinks maybe I am trying to slip something in there.

[fol. 246] The Court: No, neither one of you would do that. You know when you made that statement this morning I figured I said, well Shelby will say that is doubtful, if you meant it that way, I will call you. I know people I think. What I am going to do is render my

judgment and eliminate what I said that you agreed to in there, because if you tell me you didn't do it, you didn't Do it.

Mr. Myrick: Well I did for the purposes of the motion to dismiss, but not for the purposes of the evidence. That's what I was trying to explain.

The Court: Well that's all right. Because I knew you did at first but that was for purposes of the motion.

Mr. Myrick: That's right.

The Court: That's all right. Take it out. Now you understand in lieu, both of you understand in lieu of where I said that the defendant admitted to the jurisdiction the first time, let her write it and you bring it and you bring it to me and I will sign it.

Mr. Miller: I am going to have to get, of course, all this retyped in final form and I am going to need additional time beyond Monday.

[fol. 247] The Court: Will it be all right, Shelby?

Mr. Myrick: Judge I certainly will agree to give him another time because it is at my insistence that he didn't sign this order today and he has got to get a bond out to Atlanta, as I understand, sir, so he couldn't possibly get it by Monday. How long do you want, John? I would like to ask you that question first before I——

Mr. Miller: I can get it prepared with the Judge's order by the end of next week, I would like that much time. I am just wondering if the Judge will be available by then?

The Court: I will be in Waycross or Brunswick. If I am not over here, come on over there.

Mr. Miller: Shelby, how about extending it to the following Monday.

The Court: And the next Monday I will be here in Brunswick in Court.

Mr. Miller: I pledge you that I will try and get it signed Friday.

[fol. 248] The Court: He didn't cause that you all caused it. Shelby just said he caused it but he is ready to—it is up to you all.

Mr. Myrick: Well, he could have signed the order as written without any explanations, it would be tentatively,

if you had signed it the day that he wrote it of course, we wouldn't need to extend the date. I caused it in the sense that I objected to it. Judge I would like this to go in the record. Previously, I had agreed to extend the restraining order that this Court signed on February 24, 1953, until Monday, March 7 at 8:40 P. M.—5:00 P. M. as a result of not being able to sign this order today and as a result of Your Honor not being here Monday and as a result of the paper not being ready for your signature today I agree that the Judge and Mr. Miller will have until March 14.

The Court: Make that to March 15 because I am going to Rome next week. I just want to be sure. Until the 15th.

Mr. Myrick: Until the 15th of March, which is a Tuesday I believe. I will not Mr. Miller be able to agree to any further continuance after that time.

The Court: Now you understand the Court is not asking you to extend it to the 15th. I may be out of the jurisdiction of this Court at that time, there is a possibility. The only reason I said the 15th was I may be out of the jurisdiction of this Court on the 14th there is a possibility of it, not probable but possible. Make it the 15th. [fol. 249] My Court starts on the 14th and there is no reason why I shouldn't be here unless I have a break down of the automobile from here to Rome. But make it the 15th on Tuesday then.

Mr. Myrick: All right, sir.

The Court: You all sit down. Let her make a copy of that, and I will give you that.

Mr. Miller: I think we have got it all clear.

The Court: Let her give you that one dictation.

Hearing on the Motion ended.

PLAINTIFF'S EXHIBIT #1

IN THE SUPERIOR COURT OF CHATHAM COUNT, GEORGIA,
SEPTEMBER TERM, 1954

No. ——

CENTRAL OF GEORGIA RAILWAY COMPANY,

v.

BROTHERHOOD OF RAILROAD TRAINMEN, ET AL.

DECLARATORY JUDGMENT, ETC.

Now comes the defendants in the above entitled cause, and generally demur to the petition of the plaintiff, and for grounds thereof say:

[fol. 250] 1. That the petition upon its face does not set out a cause of action.

2. That the matters and facts set forth in the petition fail to state a cause of action.

3. The petition shows upon its face that the award of Referee George Cheney, Esq. was not forever binding.

4. The petition fails to state a cause of action, as it shows on its face that the matters and facts raised therein come within the purview of Title 45, §156 United States Code Annotated.

5. The petition shows on its face that this Court has no jurisdiction of the questions raised, and that the matters involved are within the jurisdiction of the Railroad Labor Board exclusively.

Wayland K. Sullivan, Benning M. Grice, Attorneys for Defendants.

DEFENDANT'S EXHIBIT #1

May 25, 1951

Agreements for

1. Wage Increases.
2. Cost-of-living Basis for Wage Rate Adjustments.
3. Rules Changes applicable to Road Trainmen, Yardmen, Yardmaster, Stewards, etc. and for
[fol. 251] 4. 5-day work-week, and Interim 6-day work-week applicable to Yardmen and Yardmasters represented by Brotherhood of Railroad Trainmen.

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Interim Agreement dated 5/25/52; Omitted from the Printed Record, pursuant to Appellants' Amended Designation as to Printing Record, copied at page 3.

[fol. 251-A] AGREEMENT "B"

The Agreement dated May 25, 1951, and identified as Agreement "A" is hereby deferred of application and an interim agreement, identified as "Interim Agreement," is substituted in lieu thereof.

The "Interim Agreement" will remain in effect until September 30, 1951 and thereafter be subject to the termi-

nation on not less than three (3) months' advance notice from the Brotherhood of Railroad Trainmen that they desire to place the five-day work week agreements in effect on a railway system or systems but the parties agree that the carriers are entitled to have six and seven day service performed at straight-time rates with reasonable regularity, and if it is claimed that the manpower situation is such that the adoption of the five-day work week agreement would not permit this, the question of whether there is sufficient manpower available to permit the adoption of the five-day work week shall be submitted for final decision to the nominee of the President of the United States.

Coincident with termination of such three (3) months' advance notice, but not earlier than January 1, 1952, and in conformity with the preceding paragraph, the "Interim Agreement" will be canceled and Agreement "A" will become fully effective.

Signed at Washington, D. C., this Twenty-Fifth day of May, 1951.

[fol. 251-B] For the Employees Represented by the Brotherhood of Railroad Trainmen:

W. P. Kennedy, President, Brotherhood of Railroad Trainmen, William E. B. Chase, Vice-President, Brotherhood of Railroad Trainmen, F. Aldrich, Member, Wage-Rules Committee, K. H. Jones, Member, Wage-Rules Committee, J. Anderson, Member, Wage-Rules Committee, L. A. Borden, Member, Wage-Rules Committee, L. E. Chester, Member, Wage-Rules Committee, W. E. Grady, Member, Wage-Rules Committee, C. J. Jenkins, Member, Wage-Rules Committee, F. E. Kazmer, Member, Wage-Rules Committee, John J. Klein, Member, Wage-Rules Committee, C. E. Roberts, [fol. 251-C] Member, Wage-Rules Committee, H. F. Sites, Member, Wage-Rules Committee, B. L. Wedding, Member, Wage-Rules Committee.

For the Participating Carriers Listed in Exhibit A:

L. W. Horning, Chairman, Frank J. Goebel, H. E. Jones, J. W. Oram, E. B. Perry.

For the Participating Carriers Listed in Exhibit B:

D. P. Loomis, Chairman, M. C. Anderson, E. J. Connors, E. B. Herdman, S. C. Kirkpatrick, G. E. Mallery, T. Short, J. J. Sullivan.

For the Participating Carriers Listed in Exhibit C:

W. S. Baker, Chairman, F. A. Burroughs, Jr., F. K. Day, Jr., C. A. McRee, C. R. Hook, Jr.

[fol. 251-D] AGREEMENT "A"

This Agreement made this 25th day of May, 1951, by and between the participating carriers listed in Exhibits A, B, and C, attached hereto and hereby made a part hereof and represented by Eastern, Western and Southeastern Carriers' Conference Committees, and the employees shown thereon and represented by the Brotherhood of Railroad Trainmen through their conference committee.

Witnesseth:

Whereas on or about March 15, 1949, certain proposals were served on the carriers parties hereto by the Brotherhood of Railroad Trainmen on behalf of conductors, trainmen, yard service employees and certain other groups of employees; and

Whereas on or about the same date certain proposals on behalf of the carriers parties hereto were served on the employees of said carriers represented by the Brotherhood of Railroad Trainmen; and

Whereas a hearing was conducted by a Presidential Emergency Board (No. 81) and said Board on June 15, 1950, filed its report, together with its findings and recommendations, with the President of the United States:

Now Therefore It Is Agreed:

Article 1—Wage Increases.

A. Effective July 1, 1950:

[fol. 251-E] Basic Daily Rates of Pay—Yard Service Employees.

The Daily Earnings Minima for yard service employees, effective pursuant to Item Fourth of the Agreement signed

at Chicago, Illinois, November 21, 1947, are hereby canceled and, in lieu thereof, the basic daily rates of yard service employees who have heretofore received such daily earnings minima shall be increased by 20 cents per day.

Basic daily rates for car retarder operators shall be determined by adding 80 cents to the basic daily rate of yard conductors (foremen).

Where agreements now provide for additional payment for yard conductors (foremen) acting as footboard yardmasters, such payment shall be not less than two-thirds of one hour's pay in excess of the yard conductors' (foremen's) daily rate.

United States Mail Handling Allowance.

The allowance included in the basic daily rates of passenger baggagemen handling United States Mail shall be as follows:

United States Mail Handling Allowance.

Baggagemen (A)	46 cents
Baggagemen (B)	80 cents
Baggagemen (C)	$1.14 cents

Notes:

(A) Baggagemen handling US mail of prescribed volume.

(B) Baggagemen handling dynamo and US mail of prescribed volume.

[fol. 251-F] Baggagemen handling express and US mail of prescribed volume.

(C) Baggagemen handling both dynamo and express and also handling US mail of prescribed volume.

Article 1B—

(a) Effective October 1, 1950, an increase of 18 cents per hour or $1.44 per day shall be added to the rates of employees in yard service and, in consideration of other provisions of this agreement, a further increase of 5 cents per hour or 40 cents per day shall be added to the rates of employees in yard service and an increase of 5 cents per hour or 40 cents per day shall be added to the rates of employees in road service.

(b) Effective January 1, 1951, an increase of 2 cents per

hour or 16 cents per day shall be added to the rates of employees in yard service and an increase of 5 cents per hour or 40 cents per day shall be added to the rates of employees in road service.

(c) Effective March 1, 1951, an increase of 2 cents per hour or 16 cents per day shall be added to the rates of employees in yard service and an increase of 2½ cents per hour or 20 cents per day shall be added to the rates of employees in road service.

(d) Upon the date this Agreement becomes effective as provided for in Agreement "B" an additional 4 cents per hour or 32 cents per day shall be added to the rates of employees in yard service.

(e) Where the rules of individual schedules or agreements require the payment of yard rates to employees other [fol. 251-G] than employees in yard service, the yard rates of pay established under the application of paragraphs (a), (b), (c) and (d) of this Article 1B shall apply.

(f) The interim increase of 12½ cents per hour for yardmen, and 5 cents per hour for employees in road service, effective October 1, 1950, as provided in General Order No. 2, issued February 8, 1951 by Assistant Secretary of the Army Karl R. Bendetsen, shall be credited against the increases provided for in this Article 1B.

(g) In application of increases provided for in paragraphs (a), (b), (c) and (d)—

1. All arbitraries, miscellaneous rates, or special allowances as provided in the schedules or wage agreements shall be increased under this agreement in proportion to the daily increase herein granted.

2. In determining new hourly rates, fractions of a cent will be disposed of by applying next higher quarter of a cent.

3. Mileage rates shall be determined by dividing the new daily rates by the miles constituting a basic day's work in the respective classes of service.

4. Daily earnings minima shall be increased by the amount of the respective daily increase.

5. Existing money differentials above existing standard daily rates shall be maintained.

6. Standard monthly rates and money monthly guaran-

tees in passenger service shall be thirty (30) times the new standard daily rate. Other than standard monthly rates and money monthly guarantees shall be so adjusted that [fol. 251-H] differentials existing as of September 30, 1950, shall be preserved.

7. Existing monthly rates and money monthly guarantees applicable in other than passenger service will be increased in the same proportion as the daily rate for the class of service involved is increased.

8. Where agreements now provide for additional payment for yard conductors (foremen) acting as footboard yardmasters, such payment shall be not less than two-thirds of one hour's pay in excess of the yard conductors' (foremen's) daily rate.

Article 2—Cost-of-Living Adjustment.

(a) A cost-of-living adjustment will be determined in accordance with changes in the "Consumers' Price Index for Moderate Income Families for Large Cities Combined" —"All Items" (1935-1939) (100) (Old Series)—as published by the Bureau of Labor Statistics, U. S. Department of Labor, and hereafter referred to as the BLS Consumers' Price Index. For the purpose of this computation an arbitrary base index of 178.0 is agreed to. The cost-of-living adjustment as hereinafter provided shall be made commencing April 1, 1951 and each three months thereafer based on the BLS Consumers' Price Index as of February 15, 1951 and the BLS Consumers' Price Index each third month thereafter as illustrated by the following table:

BLS Consumers' Price Index as of:	Effective date of adjustment—first pay period on or after:
Feb. 15, 1951	Apr. 1, 1951
May 15, 1951	July 1, 1951
Aug. 15, 1951	Oct. 1, 1951
Nov. 15, 1951	Jan. 1, 1952

[fol. 251-I]

BLS Consumers' Price Index as of:	Effective date of adjustment—first pay period on or after:
Feb. 15, 1952	Apr. 1, 1952
May 15, 1952	July 1, 1952
Aug. 15, 1952	Oct. 1, 1952
Nov. 15, 1952	Jan. 1, 1953
Feb. 15, 1953	Apr. 1, 1953
May 15, 1953	Oct. 1, 1953
Aug. 15, 1953	July 1, 1953

(b) The cost-of-living adjustment, when provided for, shall remain in effect to date of subsequent adjustment, as provided for in paragraph (a).

(c) Wage rates in effect March 1, 1951 plus the additional 4 cents per hour (32 cents per basic day) provided for in Article 1B (d) of this agreement will not be reduced during the life of this agreement. However, such rates are subject to a cost-of-living adjustment in accordance with the following table; adjustments to be made on the dates as illustrated in paragraph (a):

BLS Consumers' Price Index	Cost-of-living allowance
178.0 and less than 179.0	None
179.0 and less than 180.0	1 cent per hour (8 cents per basic day)
180.0 and less than 181.0	2 cents per hour (16 cents per basic day)
181.0 and less than 182.0	3 cents per hour (24 cents per basic day)
182.0 and less than 183.0	4 cents per hour (32 cents per basic day)

[fol. 251-J] and so forth, with corresponding 1 cent per hour (8 cents per basic day) adjustment for each 1 point change in the index. The initial allowance of 1 cent per hour (8 cents per basic day) made when the index reaches 179.0 will not be eliminated unless the index reaches 178.0 or less.

Examples:

If the BLS Consumers' Price Index as of February 15, 1951 should be 179.0 and less than 180.0, 1 cent per hour (8 cents per basic day) shall be added effective April 1, 1951 as a cost-of-living adjustment; if such index as of May 15, 1951 should be 178.0 or less, then effective July 1, 1951 the cost-of-living adjustment established under this example will be eliminated.

If the BLS Consumers' Price Index as of February 15, 1951 should be 180.0 and less than 181.0, 2 cents per hour (16 cents per basic day) shall be added effective April 1, 1951 as a cost-of-living adjustment; if such index as of May 15, 1951 should be 179.0 and less than 180.0, then effective July 1, 1951 the cost-of-living adjustment established under this example will be reduced by 1 cent per hour (8 cents per basic day).

The cost of living adjustment will be applied as a wage increase or a wage reduction in the same manner as the wage increase provided for in Article 1B hereof.

(d) In the event the Bureau of Labor Statistics does not issue the specified BLS Consumers' Price Index on or before the effective dates specified in paragraph (a), the cost-of-living adjustment will become effective on the first [fol. 251-K] day of the pay period during which the index is released.

(e) No adjustments, except as provided in paragraph (f), shall be made because of any revision which may later be made in the published figures of the BLS Consumers' Price Index for any base month.

(f) The parties to this agreement agree that the continuance of the cost-of-living adjustment is dependent upon the availability of the official monthly BLS Consumers' Price Index in its present form and calculated on the same basis as the Index for August 15, 1950, except that, if the Bureau of Labor Statistics, U. S. Department of Labor, should during the effective period of this agreement revise or change the methods or basic data used in calculating the BLS Consumers' Price Index in such a way as to affect the direct comparability of such revised or changed index with the index for August 15, 1950, then that Bureau shall

be requested to furnish a conversion factor designed to adjust to the new basis the base index of 178.0 described in paragraph (a) hereof, and the several indexes listed in paragraph (c) hereof.

(g) The parties agree that this Article 2 shall remain in effect until October 1, 1953 and thereafter subject to change under the provisions of the Railway Labor Act as amended.

Article 3—Five-Day Work Week.

Section 1.

(a) Beginning on the date this Agreement becomes effective on any carrier, such carrier will establish, for all [fol. 251-L] classes or crafts of yard service employees covered by this Article 3, subject to the exceptions contained therein, a work week of forty hours, consisting of five consecutive days of eight hours each, with two days off in each seven, except as hereinafter provided. The foregoing work week rule is subject to all other provisions of this Article 3.

(b) Due to the necessity of changing existing assignments to conform to the reduced work week provided for in Section 1, the Carriers will, prior to the effective date, post notices or bulletins as required by schedule, bulletin rules or practices in effect.

(1) Railroads or portions thereof on which yard assignments are bulletined:

Listing the days off of regular assignments and advertising regular relief assignments.

(2) On properties or portions thereof operating under the strict seniority or mark-up plan yard service employees shall select and be assigned "days off" periods as provided for below:

(a) Listing regular assignments according to service requirements.

(b) After all known assignments for yard service employees have been posted, all yard service employees will be required to make seven choices of their preferred "days off" period and the local chairman and local officers will cooperate in assigning the employees their "days off" period in accordance with their seniority. After "days off"

[fol. 251-M] have been assigned yard service employees will exercise seniority on the days of their work week in accordance with rules or practices in effect on individual properties or yards.

(c) After the "days off" periods have been assigned as referred to in Section 1(b) (2)(b) days off periods assigned to individual employees shall remain unchanged except when a vacancy occurs in a "days off" period, a new assignment is created, or when affected by a force reduction. Employees exercising seniority to other "days off" periods will be governed by the provisions of Section 11(b).

(d) Extra men will be handled in accordance with Section 6.

(3) The changes as enumerated above shall begin on the effective date of this Article 3, and employees may exercise seniority rights to select the assignment, or days off of their choice.

(4) After assignments as referred to in Section 1(b)(1) and Section 1(b)(2)(a) have been made changes thereafter shall be made in accordance with schedule, bulletin rules or practices in effect.

Section 2.

The term "work week" for regularly assigned employees shall mean a week beginning on the first day on which the assignment is bulletined to work, and for extra or unassigned employees shall mean a period of seven consecutive days starting with Monday.

Section 3.

(a) When service is required by a carrier on days off of regular assignments it may be performed by other regular [fol. 251-N] assignments, by regular relief assignments, by a combination of regular and regular relief assignments, or by extra employees when not protected in the foregoing manner. (This does not disturb rules or practices on roads involving the use of emergency men or unassigned employees.) Where regular relief assignments are established, they shall, except as otherwise provided in this

agreement, have five consecutive days of work, designated days of service, and definite starting times on each shift within the time periods specified in the starting time rules. They may on different days, however, have different starting times within the periods specified in the starting time rules, and have different points for going on and off duty within the same seniority district which shall be the same as those of the employee or employees they are relieving, except that in a seniority district having more than one extra board, such relief assignments as are established will be manned from the territory allotted to a particular extra board.

(b) Where regular relief assignments cannot be established for five consecutive days on the same shift within the time periods specified in the starting time rules, as provided for in Section 3(a), such assignments may be established for five consecutive days with different starting times on different shifts on different days, within the time periods specified in the starting time rules, and on different days may have dfferent points for going on and off duty in the same seniority district which shall be the same as those of the employee or employees they are relieving, except that in a seniority district having more than one extra board, such relief assignments as are established will be manned from the territory allotted to a particular extra board.

[fol. 251-O] (c) After the starting times and days of service have been established, changes therein may be made only in accordance with schedule or bulletin rules.

(d) Rules providing for assignments of crews "for a fixed period of time which shall be for the same hours daily" will be relaxed only to the extent provided in (a) and (b) of this Section 3.

(e) Regular relief assignments for yard crews will be established for the crew as a unit, except in yards operating under strict seniority or mark-up rules. However, if an operational problem exists or arises which makes it impracticable to relieve regular or regular relief crews as a unit, or if either of the parties on a property desires, the designated days off need not be the same for individual members of a crew.

Representatives of the carrier and of the employees will cooperate in designating days off of individual members of a crew.

(Note: It is recognized in the application of the foregoing that the nature of the work on certain assignments will require that some member or members of the crew have knowledge of the work of the assignment and that this will be considered one of the operational problems.)

(f) Except as otherwise provided for in this Section 3, regular relief assignments shall be established in conformity with rules in agreements or practices in effect on individual properties governing starting time and bulletining of assignments, and when so established may be changed [fol. 251-P] thereafter only in accordance with schedule and bulletin rules.

Section 4.

At points where it is not practicable to grant two consecutive days off in a work week to regularly assigned or regular relief employees, agreements may be made on the individual properties to provide for the accumulation of days off over a period not to exceed five consecutive weeks.

If the carrier contends it is not practicable to grant two consecutive days off to a regularly assigned or regular relief employee and that it is necessary to establish non-consecutive days off, representatives of the carrier and representatives of the employees will confer and endeavor to agree upon accumulation of days off or the establishment of non-consecutive days off. If such representatives fail to agree, the carrier may nevertheless establish non-consecutive days off, subject to the right of the employees to process the dispute as a grievance or claim under the rules agreements, and in such proceedings the burden will be on the carrier to prove that it was not practicable to grant two consecutive days off.

Section 5.

On properties where men hold seniority in both road and yard service and work from common extra boards protecting both classes of service, such extra boards will be sepa-

rated except as otherwise provided in the Note following this Section 5. On these properties separate extra boards covering road and yard service respectively will be established and regulated in accordance with applicable rules [fol. 251-Q] on the individual properties consistent with service requirements. Employees on common extra boards which are separated will exercise their choice to work on either the road or yard board in accordance with their seniority rights.

Employees selecting yard extra boards will remain on same for at least seven calendar days, except when cut off by reduction in force, when required to protect their seniority as yardmasters, or when they bid in a regular assignment in yard service as hereinafter provided.

Regular or extra yard service employees bidding into road service, regular or extra, will not be permitted to work in road service other than as provided in the following paragraphs until the expiration of their work week in yard service. Employees on the yard extra board bidding in regular or regular relief assignments in yard service or employees on strict seniority or mark-up boards exercising seniority to different "days off" periods will be governed by the provisions of Section 11 of this Article 3.

Employees selecting yard service under this Section 5 will be considered as not available for road service during any work week except as provided herein. Where one of the boards becomes exhausted, employees on the other board may be used for work ordinarily falling to men off the exhausted extra board and will be considered as still attached to the board of their selection. Such employees will be compensated for each tour of service on the basis of payments as provided for by rules in effect on the various properties covering service performed from common extra boards.

[fol. 251-R] Rules relating to the exercise of seniority will be relaxed to the extent necessary to comply with this Section 5.

(Note: In instances where because of the limited amount of work involved separation of such boards is not practicable, the matter shall be negotiated between representatives of employees and representatives of management on

individual properties and reasonable arrangements entered into looking to the maintenance of common boards.)

Section 6.

Extra or unassigned employees may work any five days in a work week and their days off need not be consecutive.

Section 7.

(a) In event a regular or regular relief job or assignment is annulled for one day or more, the yard service employee or employees holding the job or assignment may exercise their seniority in accordance with rules in effect on the property.

(b) Any yard service employee or employees who because of their seniority standing, or for other reasons, are unable to place themselves on a regular job or assignment on the day or days their job or assignment is annulled, will revert to the extra board and be placed thereon, in addition to the men then on the extra board, in accordance with rules in effect on the property.

(c) In event a regular or regular relief job or assignment is annulled for one day or more and any or all of [fol. 251-S] the displaced yard service employees are unable to displace an employee or employees with lesser seniority on such day or days, thereby being deprived of working one or more of the five days of the job or assignment, such yard service employee or employees, if they so desire, shall be placed on the extra board in addition to the men then on the board so as to be available for work on the sixth and/or seventh day of the work week to provide them an opportunity to work five straight time shifts during the work week, provided: (1) that such yard service employees endeavored to exercise their seniority as provided in paragraphs (a) and (b) of this Section 7, (2) that such yard service employees are used from the extra board in accordance with rules in effect on the property and (3) that such service for the first eight hours on such sixth and/or seventh days will be paid for at straight time rates, until such employee or employees have worked five straight time shifts in that work week, any service in excess of eight hours on such days to be paid for under the overtime rules.

Section 8.

(1) Existing rules which relate to the payment of daily overtime for regular yardmen and practices thereunder are not changed hereby and shall be understood to apply to regular relief men, except that work performed by regular relief men on assignments which conform with the provisions of Section 3 shall be paid for at the straight time rate.

(2) Current overtime rules relating to extra yardmen are canceled as of the effective date of this agreement and the following will apply:

[fol. 251-T] Except as indicated below or when changing off where it is the practice to work alternately days and nights for certain periods, working through two shifts to change off, or where exercising seniority rights, all time worked in excess of eight hours continuous service in a twenty-four hour period shall be paid for as overtime on a minute basis at one and one-half times the hourly rate.

In the application of this rule, the following shall govern:

(a) This rule applies only to service paid on an hourly or daily basis and not to service paid on mileage or road basis.

(b) A tour of duty in road service shall not be used to require payment of such overtime rate in yard service. (The term "road service," as used in this paragraph (b), shall not apply to employees paid road rates, but governed by yard rules.)

(c) Where an extra man commences work on a second shift in a twenty-four hour period he shall be paid at time and one-half for such second shift except when it is started twenty-two and one-half to twenty-four hours from the starting time of the first shift.

A twenty-four hour period, as referred to in this rule, shall be considered as commencing for the individual employee at the time he started to work on the last shift on which his basic day was paid for at the pro rata rate.

[fol. 251-U] (d) An extra man changing to a regular assignment or a regularly assigned man reverting to the extra list shall be paid at the pro rata rate for the first eight hours of work following such change.

(e) Except as modified by other provisions of this rule, an extra employee working one shift in one grade of service and a second shift in another grade of service shall be paid time and one-half for the second shift, the same as though both shifts were in the same grade of service, except where there is another man available to perform the work at pro rata rate.

Note (1): On railroads where a seniority board is in effect in cases where there is a man or men on such board available for work at the pro rata rate, a senior man who exercises his seniority to work two shifts, the second of which would otherwise, under the provisions of this rule, be paid at the overtime rate, shall be paid at the pro rata rate.

Note (2): The adoption of this rule shall not affect any existing rule in the schedule of any individual carrier relating to service performed on a succeeding trick when an employee's relief fails to report at the fixed starting time.

Note (3): On such roads as have an existing rule or practice differing from the rule of the December 12, 1947 Agreement, titled "Overtime Rate in Yard Service—Extra Men," and providing for pay at time and one-half, without exception, to extra yard men performing a second tour of duty in a 24-hour period, the Employees' Committee may elect to retain the existing rule or practice in lieu of this rule.

[fol. 251-V] (3) Employees worked more than five straight time eight-hour shifts in yard service in a work week shall be paid one and one-half times the basic straight time rate for such excess work except:

(a) Where days off are being accumulated under Section 4 of this Article 3;

(b) When changing off where it is the practice to work alternately days and nights for certain periods;

(c) When working through two shifts to change off;

(d) Where exercising seniority rights from one assignment to another;

(e) Where paid straight time rates under existing rules or practices for a second tour of duty in another grade or class of service.

In the event an additional day's pay at the straight time rate is paid to a yard service employee for other service performed or started during the course of his regular tour of duty, such additional day will not be utilized in computing the five straight time eight-hour shifts referred to in this paragraph (3).

(4) There shall be no overtime on overtime; neither shall overtime hours paid for, nor time paid for at straight time rate for work referred to in paragraph (3) of this Section 8, be utilized in computing the five straight time eight-hour shifts referred to in such paragraph (3) of this Section 8, nor shall time paid for in the nature of arbitraries or special allowances such as attending Court, inquests, investi- [fol. 251-W] gations, examinations, deadheading, etc., be utilized for this purpose, except when such payments apply during assigned working hours in lieu of pay for such hours, or where such time is now included under existing rules in computations leading to overtime. Existing rules or practices regarding the basis of payment of arbitraries or special allowances such as attending Court, inquests, investigations, examinations, deadheading, etc., also for calls, basic day, transfer time, stand-by time, and compensation therefor, preparatory time, starting time (except as otherwise provided in Section 3) and similar rules are not affected by the provisions of this Article 3.

(5) Any tour of duty in road service shall not be considered in any way in connection with the application of the provisions of this Article 3, nor shall service under two agreements be combined in any manner in the application of this Article 3.

Section 9.

Beginning on the date this Agreement becomes effective on any carrier, the Vacation Agreement dated April 29, 1949, effective July 1, 1949, shall be amended as to such carrier to provide the following insofar as yard service employees and employees having interchangeable yard and road rights covered by said agreement, who are represented by the Brotherhood of Railroad Trainmen, are concerned:

Section 1(a)—1(b). Add:

In the application of Section 1(a) and 1(b) each basic day in yard service performed by a yard service employee or by an employee having interchangeable yard and road rights shall be computed as 1.2 days for purposes of de- [fol. 251-X] termining qualifications for vacation.

Qualifying years accumulated, also qualifying requirements for years accumulated for extended vacations, prior to the calendar years in which Agreement "A" becomes effective, shall not be changed.

Section 1(d). Add "Note": The 60 and 30 calendar days referred to herein shall not be subject to the 1.2 computation provided for in Sections 1(a) and 1(b).

Section 2(a). Add:

Yard Service

An employee receiving one week's vacation, or pay in lieu thereof, under Section 1(a) shall be paid 1/52 of the compensation earned by such employee, under schedule agreements held by the organizations signatory to the Vacation Agreement effective July 1, 1949, on the carrier on which he qualified under Section 1 (or carriers in case he qualified on more than one carrier under Section 1(f)) during the calendar year preceding the year in which the vacation is taken, but in no event shall such pay be less than five (5) minimum basic day's pay at the rate of the last service rendered.

Combination of Yard and Road Service

An employee having interchangeable yard and road rights receiving one week's vaaction, or pay in lieu thereof, under Section 1(a) shall be paid 1/52 of the compensation earned by such employee, under schedule agreements held [fol. 251-Y] by the organizations signatory to the Vacation Agreement effective July 1, 1949, on the carrier on which he qualified under Section 1 (or carriers in case he qualified on more than one carrier under Section 1(f)) during the calendar year preceding the year in which the vacation is taken; provided that, if the vacation is taken during the time such employee is working in road service such pay shall be not less than six (6) minimum basic days' pay

at the rate of the last road service rendered, and if the vacation is taken during the time such employee is working in yard service, such pay shall be not less than five (5) minimum basic days' pay at the rate of the last yard service rendered.

Section 2(b). Add:

Yard Service

An employee receiving two weeks' vacation, or pay in lieu thereof, under Section 1(b) shall be paid 1/26 of the compensation earned by such employee, under schedule agreements held by the organizations signatory to the Vacation Agreement effective July 1, 1949, on the carrier on which he qualified under Section 1 (or carriers in case he qualified on more than one carrier under Section 1(f)) during the calendar year preceding the year in which the vacation is taken, but in no event shall such pay be less than ten (10) minimum basic days' pay at the rate of the last yard service rendered.

Combination of Yard and Road Service

An employee having interchangeable yard and road rights receiving two weeks' vacation, or pay in lieu thereof, [fol. 251-Z] under Section 1(b) shall be paid 1/26 of the compensation earned by such employee, under schedule agreements held by the organizations signatory to the Vacation Agreement effective July 1, 1949, on the carrier on which he qualified under Section 1 (or carriers in case he qualified on more than one carrier under Section 1(f)) during the calendar year preceding the year in which the vacation is taken; provided that, if the vacation is taken during the time such employee is working in road service such pay shall be not less than twelve (12) minimum basic days' pay at the rate of the last road service rendered, and if the vacation is taken during the time such employee is working in yard service such pay shall be not less than ten (10) minimum basic days' pay at the rate of the last yard service rendered.

Section 9. Add:

With respect to yard service employees, and with respect to any yard service employee having interchangeable yard and road rights who receives a vacation in yard service, such additional vacation days shall be reduced by 1/6th.

General.

Except to the extent that the Vacation Agreement effective July 1, 1949, is changed by this Article 3, the said Vacation Agreement, as well as the Memorandum of Understanding of April 29, 1949, shall remain in full force and effect.

Section 10.

Existing weekly or monthly guarantees producing more than five days per week shall be modified to provide for a guarantee of five days per week. Nothing in this Article 3 [fol. 251-AA] shall be construed to create a guarantee where none now exists.

Section 11.

(a) All regular or regular relief assignments for yard service employees shall be for five (5) consecutive calendar days per week of not less than eight (8) consecutive hours per day, except as otherwise provided in this Article 3.

(b) An employee on a regular or regular relief assignment in yard service who takes another regular or regular relief assignment in yard service, or selects another "days off" period on a strict seniority or mark-up board in yard service, will be permitted to go on the assignment or "days off" period of his choice, and will take the conditions of that assignment or "days off" period, but will not be permitted to work more than five (5) straight time eight-hour shifts, as referred to in paragraph (d) of this Section, in the work week of the assignment or "days off--period which he had at the time he made his choice; provided, however, that if the foregoing would not permit such employee to work one or more days of the assignment of his choice, and if there is no extra man available who could be used to perform the work on those days, he may be used to work those days at the straight time rate.

(c) An employee on a yard extra board who takes a regu-

lar or regular relief assignment in yard service will be permitted to go on the assignment of his choice and will take the conditions of that assignment.

[fol. 251-BB] An employee on a regular or regular relief assignment who goes on an extra board will take the conditions attached to the extra board, but will not be permitted to work more than five straight time eight-hour shifts, as referred to in paragraph (d) of this Section, in the work week starting with the Monday in which the change is made.

(d) Except as provided in paragraphs (b) and (c) of this Section, employees, regular or extra, will not be permitted to work more than five straight time eight-hour shifts in yard service (excluding the exceptions from the computations provided for in Section 8, paragraphs (3) and (4) in a work week, unless the extra board has been exhausted and the exigencies of the service require the use of additional men, in which event senior available employees in the class in which the vacancy occurs shall be used in accordance with applicable rules or practices in effect on individual properties.

Section 12.

(a) Where reference is made in this Article 3 to the term "yard service" it shall be understood to have reference to service performed by employees governed by yard rules and yard conditions.

(b) Section 3(c) and Section 5 of this Article 3 shall not apply to:

Car Retarder Operators
Hump Motor Car Operators (Chauffeurs)
Levermen
Switchtenders (sometimes classified as Switchmen)

[fol. 251-CC] (c) None of the provisions of this Article 3 relating to starting time shall be applicable to any classification of employees included within the scope of this Article 3 which is not now subject to starting time rules.

Section 13.

Existing rules and practices, including those relating to the establishment of regular assignments, the establishment and regulation of extra boards, the operation of working lists or "mark-up-boards," etc., shall be changed or eliminated to conform to the provisions of this Article 3 in order to implement the operation of the reduced work week on a straight time basis.

Section 14.

The parties hereto having in mind conditions which exist or may arise on individual carriers in the application of the five-day work week agree that the duly authorized representative (General Chairman) of the employees, party to this agreement, and the officer designated by the carrier, may enter into additional written understandings to implement the purposes of this Article 3, provided that such understandings shall not be inconsistent with this Article 3.

Article 4—Initial Terminal Delay—Passenger Service.

(a) Initial terminal delay shall be paid on a minute basis to Conductors and Trainmen in passenger service for all time in excess of sixty (60) minutes computed from the time of reporting for duty up to the time the train leaves the terminal ("terminal" means passenger station or other starting point from which the train actually departs), at one-eighth (1/8th) of the basic daily rate, in addition to [fol. 251-DD] the full mileage, with the understanding that the actual time consumed in the performance of service in the initial terminal for which an arbitrary allowance of any kind is paid shall be deducted from the initial terminal time under this rule.

Where mileage is allowed between the point of reporting and the point of departure, each mile so allowed will extend by three (3) minutes the sixty (60) minute period after which initial terminal delay payment begins.

(b) When road overtime accrues during any trip or tour of duty, in no case will payment for both initial terminal delay and overtime be paid, but whichever is the greater will be paid.

(c) When a tour of duty is composed of a series of trips, initial terminal delay will be computed on only the first trip of the tour of duty.

(d) This rule shall become effective on August 1, 1951, except on such roads as the employee committees may elect to preserve existing rules and so notify the carrier on or before July 1, 1951.

Article 5—Initial Terminal Delay—Freight Service.

(a) Initial terminal delay shall be paid on a minute basis to Conductors and Trainmen in freight service for all time in excess of seventy-five (75) minutes computed from the time of reporting for duty up to the time the train leaves the terminal at one-eighth (1/8th) of the basic daily rate, in addition to the full mileage, with the understanding that the actual time consumed in the performance of service in [fol. 251-EE] the initial terminal for which an arbitrary allowance of any kind is paid shall be deducted from the initial terminal time under this rule.

Note: The phrase "train leaves the terminal" means when the train actually starts on its road trip from the yard track where the train is first made up.

This rule will not apply to pusher, helper, mine run, shifter, roustabout, belt line, transfer, work, wreck, construction, circus train (paid special rates or allowances), road switcher (district runs), or to local freight or mixed service where switching is performed at initial terminal in accordance with schedule rules.

Note: The question as to what service constitutes a "mine run" as that term is used above shall be determined on each individual railroad by management and the appropriate general committees.

Where mileage is allowed between the point of reporting for duty and the point of departure from the track on which the train is first made up, each mile so allowed will extend by 4.8 minutes the period of seventy-five (75) minutes after which initial terminal delay payment begins.

(b) When road overtime accrues during any trip or tour of duty, in no case will payment for both initial terminal delay and overtime be paid, but whichever is the greater will be paid.

(c) When a tour of duty is composed of a series of trips, initial terminal delay will be computed on only the first trip of the tour of duty.

[fol. 251-FF] (d) This rule shall become effective August 1, 1951, except on such roads as the employee committees may elect to preserve existing rules and so notify the carrier on or before July 1, 1951.

Article 6—Interdivisional Service, Etc.

(a) Where an individual carrier not now having the right to establish interdivisional, interseniority district, intra-divisional, or intraseniority district service, in freight or passenger service, considers it advisable to establish the same on any particular territory of the property, appropriate committee or committees of the Brotherhood of Railroad Trainmen representing the employees involved and proper representatives of the carrier will conduct negotiations relating thereto. In such negotiations, the carrier and the employees should definitely recognize each other's fundamental rights and, where necessary, reasonable and fair arrangements should be made in the interest of both parties.

(b) In the event the carrier and such committee or committees cannot agree on such matters, any party involved may invoke the services of the National Mediation Board.

(c) If mediation fails, the parties agree that such disputes shall be submitted to arbitration under the Railway Labor Act, as amended, but no dispute shall be submitted to arbitration until after the expiration of one (1) year from the date of this agreement.

The decision of the arbitration board shall be final and binding upon both parties, except that the award shall not require the carrier to establish interdivisional, inter-

[fol. 251-GG] seniority district, intradivisional, or intraseniority district service in the particular territory involved in each such dispute but shall be accepted by the parties as the conditions which shall be met by the carrier if and when such interdivisional, interseniority district, intradivisional, or intraseniority district service is established in that territory. Provided further, however, if carrier elects not to put the award into effect, carrier shall be deemed

to have waived any right to renew the same request for a period of one (1) year following the date of said award, except by consent of employees party to said arbitration.

(d) This rule shall become effective August 1, 1951, except on such carriers as may elect to preserve existing rules or practices and so notify the authorized employee representatives on or before July 1, 1951.

Article 7—Pooling of Cabooses.

(a) The employees affected by this rule and the carriers represented by the Eastern, Western and Southeastern Carriers' Conference Committees, being desirous of cooperating in situations where train service can be improved and trains expedited by the pooling of cabooses, adopt the following:

(b) Where an individual carrier not now having the right of pooling cabooses considers it advisable to establish such pooling, appropriate committee or committees representing the employees involved and proper representatives of the carrier will conduct negotiations relating thereto.

[fol. 251-HH] (c) A reasonable and practical approach to the problems herein referred to, namely—the pooling of cabooses—requires that the carriers and the employees definitely recognize each other's fundamental rights, and where necessary, reasonable and fair arrangements should be made in the interest of both parties.

It is further agreed that:

(1) Whenever the carrier desires so to pool its cabooses, it shall give notice to the General Chairman or General Chairmen of such intention, specifying the territory and service involved, whereupon the carrier and employee representatives shall, within 30 days, endeavor to agree upon any facilities that should be furnished to provide accommodations substantially equivalent to those formerly available on the cabooses and used by the employees and on appropriate arrangements for supplying and servicing such pooled cabooses.

(2) In the event the carrier and such representatives cannot so agree on the matter, any party involved may invoke the services of the National Mediation Board.

(3) If mediation fails, the parties agree that the dispute shall be submitted to arbitration under the Railway Labor Act, as amended. The decisions of the Arbitration Board shall be final and binding upon both parties, except that the award shall not require the carrier to pool cabooses but shall be accepted by the parties as the conditions which shall be met by the carrier if and when cabooses are pooled. Provided further, however, if carrier elects not to put the award into effect, carrier shall be deemed to have [fol. 251-II] waived any right to renew the same request for a period of one year following the date of said award, except by consent of employees party to said arbitration.

(d) This rule shall become effective August 1, 1951, except on such carriers as may elect to preserve existing rules or practices and so notify the authorized employee representatives on or before July 1, 1951.

Article 8—Coupling and Uncoupling Air, Signal and Steam Hose.

(Subject to separate agreement made May 25, 1951.)

Article 9—More Than One Class of Road Service.

(Subject to separate agreement made May 25, 1951.)

Article 10—Switching Limits.

(a) The employees involved, and the carriers represented by the Eastern, Western and Southeastern Carriers' Conference Committees, being desirous of cooperating in order to meet conditions on the various properties to the end that efficient and adequate switching service may be provided and industrial development facilitated, adopt the following:

(b) Except as provided in paragraph (c) hereof, where an individual carrier not now having the right to change existing switching limits where yard crews are employed, considers it advisable to change the same, it shall give notice in writing to the General Chairman or General Chairmen of such intention, whereupon the carrier and the

[fol. 251-JJ] General Chairman or General Chairmen shall, within 30 days, endeavor to negotiate an understanding.

In the event the carrier and the General Chairman or General Chairmen cannot so agree on the matter, any party involved may invoke the services of the National Mediation Board.

If mediation fails, the parties agree that the dispute shall be submitted to arbitration under the Railway Labor Act, as amended. The jurisdiction of the Arbitration Board shall be limited to the questions submitted to it. The award of the Board shall be final and binding upon the parties.

(c) Where, after the effective date of this agreement, an industry desires to locate outside of existing switching limits at points where yard crews are employed, the carrier may assure switching service at such location and may perform such service with yard crews from a yard or yards embraced within one and the same switching limits without additional compensation or penalties therefor to yard or road crews, provided the switch governing movement from the main track to the track or tracks serving such industry is located at a point not to exceed four miles from the then existing switching limits. Road crews may perform service at such industry only to the extent they could do so if such industry were within switching limits. Where rules require that yard limits and switching limits be the same, the yard limit board may be moved for operating purposes but switching limits shall remain unchanged unless and until change- in accordance with paragraph (b) hereof.

[fol. 251-KK] The yard conductor (foreman) or yard conductors (foremen) involved shall keep account of and report to the carrier daily on form provided the actual time consumed by the yard crew or crews outside of the switching limits in serving the industry in accordance with this paragraph (c) and a statement of such time shall be furnished the General Chairman or General Chairmen representing yard and road crews by the carrier each month. Unless some other plan for equalization of time is agreed to by the General Chairman or General Chairmen representing yard and road crews, the carrier

shall periodically offer to road employees the opportunity to work in yard service, under yard rules and conditions, on assignments as may be mutually agreed upon by the local representatives of the employees involved, for a period of time sufficient to offset the time so consumed by yard crews outside the switching limits. In the event such local representatives fail to agree, the carrier will designate such assignments but shall not be subject to penalty claims because of doing so. Such equalization of time shall be apportioned among employees holding seniority as road conductors or road brakemen in the same ratio as the accumulated hours of yard conductors (foremen) and yard brakemen (helpers).

(d) This agreement shall in no way affect the changing of yard or switching limits at points where no yard crews are employed.

(e) This rule shall become effective August 1, 1951 except on such carriers as may elect to preserve existing rules or practices and so notify the authorized employe representatives on or before July 1, 1951.

[fol. 251-LL] Article 11—Reporting for Duty.

In assigned road service where employes report for duty without being called, and it is desired on any day to defer the reporting time, advance notice shall be given not less than the usual advance calling time for reporting for duty at each terminal and in accordance with usual calling practices at such terminal. The employe shall be notified at such time when he is to report and only one such deferment may be made. In such cases the time of the trip or tour of duty shall begin at the time the employe is required in accordance with said notice of change to report for duty and does so report. If not so notified, the reporting time shall be as provided in the assignment.

Where employes are called, existing rules or practices are not changed or affected by this rule.

This rule shall become effective August 1, 1951 except on such carriers as may elect to preserve existing rules or practices and so notify the authorized employe representatives on or before July 1, 1951.

Article 12—Approval.

This agreement is subject to approval of the courts with respect to carriers in the hands of receivers or trustees.

This agreement is subject to such approval as may be necessary under the terms of the executive order by the President of the United States taking over the railroads and the laws of the United States pertaining to stabilization of prices, wages, etc.

[fol. 251-MM] Article 13—Moratorium.

No proposals for changes in rates of pay, rules or working conditions will be initiated or progressed by the employees against any carrier or by any carrier against its employees, parties hereto, within a period of three years from October 1, 1950, except such proposals for changes in rules or working conditions which may have been initiated prior to June 1, 1950. Provided, however, that if government wage stabilization policy permits so-called annual improvement wage increases, the parties may meet with the President of the United States, or such other person as he may designate, on or after July 1, 1952, to discuss whether or not further wage adjustments for employes covered by this agreement are justified, in addition to increases received under the cost-of-living formula. At the request of either party for such a meeting, the President or his representative shall fix the time and place for such meeting. The President or his representative and the parties may secure information from the wage stabilization authorities or other government agencies. If the parties are unable to agree at such conferences whether or not further wage adjustments are justified they shall ask the President of the United States to appoint a referee who shall sit with them and consider all pertinent information, and decide promptly whether further wage increases are justified and, if so, what such increases should be, and the effective date thereof. The carrier representatives shall have one vote, the employe representatives shall have one vote and the referee shall have one vote.

The foregoing will not debar management and committees on individual railroads from mutually agreeing upon

[fol. 251-NN] changes in rates, rules and working conditions of employees covered by this agreement.

Article 14—Disputes Committee.

Any dispute arising between parties to this agreement in connection with the revision of individual agreements so as to make them conform to this agreement shall be referred jointly, or by either party, for decision to a committee, the carrier members of which shall be three members of the Carriers' Conference Committees, signatories hereto, or their successors, and the employee members of which shall be three representatives selected by the organization signatory hereto.

In the event the Committee is unable to reach a decision with respect to any such disputes, a neutral referee shall be selected by the members of the Committee, to sit with the Committee and act as a member thereof.

If a majority of the Committee is unable to agree upon the selection of a neutral referee, any three members of the Committee may request the National Mediation Board to appoint such neutral referee.

Decisions of a majority of all the members of the Committee shall be final and binding upon the parties to any dispute in which a decision may be rendered.

[fol. 251-OO] Article 15—

This agreement is in full and final settlement of the dispute growing out of notices served by the employees, parties hereto, and by the carriers, parties hereto, on or about March 15, 1949, in accordance with Section 6 of the Railway Labor Act, of intended changes in agreements affecting rates of pay, rules and working conditions.

Article 16—

This agreement shall be construed as a separate agreement by and on behalf of each carrier party hereto and those employees represented by the Brotherhood of Railroad Trainmen as heretofore stated; and shall remain in effect until September 30, 1953 and thereafter, subject to notices served in accordance with Section 6 of the Railway Labor Act, as amended.

Signed at Washington, D. C., this Twenty-Fifth day of May, 1951.

[fol. 251-PP] For the Employees Represented by the Brotherhood of Railroad Trainmen:

W. P. Kennedy, President, Brotherhood of Railroad Trainmen, William E. B. Chase, Vice-President, Brotherhood of Railroad Trainmen, F. Aldrich, Member, Wage-Rules Comittee, K. H. Jones, Member, Wage-Rules Committee, J. Anderson, Member, Wage-Rules Committee, L. A. Borden, Member, Wage-Rules Committee, L. E. Chester, Member, Wage-Rules Committee, W. E. Grady, Member, Wage-Rules Committee, C. J. Jenkins, Member, Wage-Rules Committee, F. E. Kazmer, Member, Wage-Rules Committee, John J. Klein, Mem-
[fol. 251-QQ] ber, Wage-Rules Committee, C. E. Roberts, Member, Wage-Rules Committee, H. F. Sites, Member, Wage-Rules Committee, B. L. Wedding, Member, Wage-Rules Committee.

For the Participating Carriers Listed in Exhibit A:

L. W. Horning, Chairman, Frank J. Goebel, H. E. Jones, J. W. Oram, E. B. Perry.

For the Participating Carriers Listed in Exhibit B:

D. P. Loomis, Chairman, M. C. Anderson, E. J. Connors, E. B. Herdman, S. C. Kirkpatrick, G. E. Mallery, T. Short, J. J. Sullivan.

[fol. 251-RR] For the Participating Carriers Listed in Exhibit C:

W. S. Baker, Chairman, F. A. Burroughs, Jr., F. K. Day, Jr., C. A. McRee, C. R. Hook, Jr.

[fol. 252] EXHIBIT A

Eastern Railroads

Eastern Railroads which have authorized representation by the Eastern Carriers' Conference Committee in the handling of notices filed on the individual carriers on or about March 15, 1949 by the Brotherhood of Railroad Trainmen for changes in schedule rules to provide for a 40-hour week, with time and one-half for Sundays and holidays for Yard Employees and changes in other rules and certain rates of pay; also, Carriers' notices served on the organizations on or about same date for certain rules changes.

(Authority is co-extensive with the notices filed and with scope of agreements as to classes of employees.)

[fol. 253]

Railroads	Represented by the Brotherhood of Railroad Trainmen— Conductors	Trainmen	Switchmen	Dining Car Stewards	Yard-Masters	Miscellaneous Classes
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Akron, Canton & Youngstown RR	x	x	x		x	
Ann Arbor Railroad	(i)	x	x			
Baltimore & Ohio Railroad		x		x		
B&O-Chicago Terminal RR Co			x			
Curtis Bay Railroad		x				
Staten Island Rapid Transit		x			x	
Bessemer & Lake Erie RR Co	(i)	x	(a)			
Boston & Maine Railroad	x	x	x			(b)
Boston Terminal Company			x			
Brooklyn Eastern District Term	x	x			x	
Canadian Natl. Lines in N.E		x	x			
United States & Canada RR		x	x			
Champlain & St. Lawrence RR		x	x			
St. Clair Tunnel Company		x	x			
Can. Natl. Rys. State of N.Y		x	x			
Canadian Pacific Ry. Co	x	x	x			
Central RR Co. of New Jersey(T)		x	x			

[fol. 254]

Central RR Co. of Penna		x	x			(b)
Central Vermont Railway		x	x		x	
Chesapeake & Ohio Railway—						
Pere Marquette District		x	x			
Fort St, Union Depot Co			x			
Chicago, Ind. & L'ville Ry. Co		x	x	x	x	
Chicago Union Station Company		(h)				
Cincinnati Union Terminal Co			x		x	
Delaware & Hudson Railroad		x		x		

Delaware, Lackawanna & Western RR	x	x		x		
Detroit Terminal Railroad Co.	x	x	x			
Detroit, Toledo & Ironton RR Co.	x	x				
Erie Railroad Company	x	x	x		x	(b)
Grand Trunk Western Ry. Co.		x	x	x	x	
Jay Street Connecting RR	x	x			x	
Lake Terminal Railroad Co.	x	x			x	
Lehigh & New England RR Co.		x			x	
[fol. 255]						
Lehigh Valley Railroad Co.		x	x	x		(b) (c)
Maine Central Railroad Co.	x	x	x		x	
Portland Terminal Co.		x	x		x	
Monongahela Railway Co.		x				
Montour Railroad Co.	x	x				
New York Central System—				x		
Full Line Agreements		x	x			
NYC—Buffalo & East		x	x			
NYC—West of Buffalo		x	x		x	(b)
Ohio Central Division	x	x	x			
Federal Valley		x	x			
Michigan Central Railroad	x	x	x			
Canada Division		x	x			(b) (e)
C.C.C. & St. L. Railway		x	x			
Peoria & Eastern Railway		x	x			
L. & J. B. & Railroad		x	x			
Boston & Albany Railroad		x	x			(b) (f)
Indiana Harbor Belt RR	x	x	x			
Chicago River & Indiana RR	x	x	x			
Chicago Junction Ry.	x	x	x			
Pittsburgh & Lake Erie RR Co.		x	x			
Lake Erie & Eastern RR Co.	x	x	x			

[fol. 256]

Railroads	Represented by the Brotherhood of Railroad Trainmen— Conductors	Trainmen	Switchmen	Dining Car Stewards	Yard-Masters	Miscellaneous Classes
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Cleveland Union Terminals			x			
New York, Chicago & St. Louis RR		x	x			
New York, New Haven & Hartford RR	x	x	x	x		(b)
New York, Ontario & Western Ry		x			x	
Pennsylvania Railroad	x	x	x	x		(b) (g)
Baltimore & Eastern RR Co		x	x			
Pennsylvania-Reading SS Lines	x	x	x		x	
Pittsburgh & West Virginia Ry	x	x				
Pitts. Chartiers & Youghiogheny Ry	x	x				
Reading Company		x	x	x	x	(d)
River Terminal Railway Co	x	x				
Union Depot Co.—Columbus, O			x			
Union Freight Railroad Co	x	x	x			
Washington Terminal Company			x			
Wheeling & Lake Erie Ry. Co		x	x			
Lorain & West Virginia Ry. Co		x	x			

[fol. 257] Footnotes:

(a)—Bessemer & Lake Erie—Brotherhood of Railroad Trainmen represents switchmen in all yards except Conneaut Yard.

(b)—Boston & Maine, C RR of Pa., Erie, Lehigh Valley, NYC System, Ohio Central Division, C.C.C. & St. L. Indiana Harbor Belt, New York, New Haven & Hartford, Pennsylvania—Car Retarder Operator represented by the Brotherhood of Railroad Trainmen.

(c) Lehigh Valley—Car Riders represented by the Brotherhood of Railroad Trainmen.

(d) Reading Company—Car Droppers at Port Reading and Chauffeurs represented by the Brotherhood of Railroad Trainmen.

(e) C.C.C. & St. L.—Motor Car Operators represented by the Brotherhood of Railroad Trainmen.

(f) Indiana Harbor Belt—Levermen represented by the Brotherhood of Railroad Trainmen.

(g) Pennsylvania—Hump Motor Car Operators represented by the Brotherhood of Railroad Trainmen.

(h) Chicago Union Station—Switchtenders only.

(i) Ann Arbor, Bessemer & Lake Erie—Representation of road conductors obtained by Brotherhood of Railroad Trainment subsequent to filing of the March 15, 1949 notices. Carrier authorized representation by Eastern Carriers' Conference Committee under date of May 23, 1951.

[fol. 258] (T) Trusteeship.

For the Carrier:

H. E. Jones.

For the Employees:

C. W. Stanley, The Brotherhood of Railroad Trainmen.

Washington, D. C. May 23, 1951.

Exhibit B

Western Railroads

List of carriers as represented by the western carriers' conference committee—1949, and their employees represented by the Brotherhood of Railroad Trainmen, in connection with notices dated on or about March 15, 1949 served upon certain western railroads requesting a 40-hour week with time and one-half rates for Sundays and Holidays for all classes or crafts of yard service employees including affiliated classes or crafts; the establishment of graduated rate of pay tables in all classes of service; the restoration of standard wage rates between the territories; and mod-fication of certain rules as set forth therein, including rules covering dining car stewards; and in connection with notices served on or about the same date by individual western railroads upon their employees represented by the Brotherhood of Railroad Trainmen, of desire and intent to change existing rules, regulations, interpretations or practices, however established, to the extent and as shown in said notices.

[fol. 259] (Authorization is coextensive with the provisions of current schedule agreements applicable to the employees represented by the Brotherhood of Railroad Trainmen.)

Alton and Southern Railroad.

1: Atchison, Topeka & Santa Fe Railway, The
1: Gulf, Colorado & Santa Fe Railway
1: Panhandle & Santa Fe Railway
2: Belt Railway Company of Chicago, The Burlington-Rock Island Railroad
3: Camas Prairie Railroad
1-4: Chicago & Eastern Illinois Railroad
4: Chicago & Illinois Midland Railway
5-6: Chicago & North Western Railway
2-4: Chicago & Western Indiana Railroad
1-7: Chicago, Burlington & Quincy Railroad, Chicago Great Western Railway
1: Chicago, Milwaukee, St. Paul & Pacific Railroad
1: Chicago, Terre Haute & Southeastern Railway

1: Chicago, Rock Island & Pacific Railroad
1: Chicago, St. Paul, Minneapolis & Omaha Railway
1-4-8: Colorado & Southern Railway
2-4: Colorado & Wyoming Railway
1: Denver & Rio Grande Western Railroad, Des Moines Union Railway
2: Duluth, Missabe & Iron Range Railway (Iron Range Division)
2: Duluth, Missabe & Iron Range Railway (Missabe Division) Duluth Union Depot & Transfer Co.
4: East St. Louis Junction Railroad
2: Elgin, Joliet & Eastern Railway
1: Fort Worth & Denver City Railway

Wichita Valley Railway

2: Galveston, Houston & Henderson Railroad
[fol. 260] 1: Great Northern Railway
Green Bay & Western Railroad
Kewaunee, Green Bay & Western Railroad
Gulf Coast Lines—Comprising

1: T—Asherton & Gulf Railway
1-4: T—Asphalt Belt Railway
1: T—Beaumont, Sour Lake & Western Railway
1: T—Houston & Brazos Valley Railway
1: T—Houston North Shore Railway
9: T—Iberia, St. Mary & Eastern Railroad
1-2: T—International-Great Northern Railroad
9: T—New Iberia & Northern Railroad
1: T—New Orleans, Texas & Mexico Railway
1: T—Orange & Northwestern Railroad, The
9: T—Rio Grande City Railway
10: T—St. Louis, Brownsville & Mexico Railway
1: T—San Antonio Southern Railway
1-2: T—San Antonio, Uvalde & Gulf Railroad
9: T—San Benito & Rio Grande Valley Railway
1: T—Sugar Land Railway
2: Houston Belt & Terminal Railway
1: Illinois Central Railroad

Chicago & Illinois Western Railroad
Kansas City Southern Railway, The

Kansas City Terminal Railway
King Street Passenger Station

2: Los Angeles Junction Railway
2-11: Louisiana & Arkansas Railway
Manufacturers Railway
2: Midland Valley Railroad

Kansas, Oklahoma & Gulf Railway
Minneapolis & St. Louis Railway, The
Minneapolis, St. Paul & Sault Ste. Marie Railroad

4: Duluth, South Shore & Atlantic Railway

Minnesota Transfer Railway

[fol. 261] 1-2: Missouri-Kansas-Texas Railroad
1-2: Missouri-Kansas-Texas Railroad Company of Texas
1: T—Missouri Pacific Railroad
1: Northern Pacific Railway

Northwestern Pacific Railroad
Ogden Union Railway & Depot Company, The

12: Peoria & Pekin Union Railway
Port Terminal Railroad Association
13: St. Joseph Terminal Railroad
1: St. Louis-San Francisco Railway
1: St. Louis, San Francisco & Texas Railway
2-4: St. Louis Southwestern Railway
2-4: St. Louis Southwestern Railway Company of Texas
1: San Diego & Arizona Eastern Railway
1-14-15: Southern Pacific Co. (Pacific Lines)—Excluding Former

El Paso & Southwestern System
Southern Pacific Company—Former El Paso & Southwestern System
1: Spokane, Portland & Seattle Railway
1: Oregon Electric Railway
1: Oregon Trunk Railway
Terminal Railroad Association of St. Louis
1-2-4-16: Texas & New Orleans Railroad
1-2: Texas & Pacific Railway
Abilene & Southern Railway

Fort Worth Belt Railway
Texas-New Mexico Railway
Weatherford, Mineral Wells & Northwestern Railway, The
Texas Mexican Railway, The
2: Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans
[fol. 262] 2-4: Toledo, Peoria & Western Railroad
1: Union Pacific Railroad
2: Union Railway Company (Memphis)
2: Union Terminal Company (Dallas)
1-17: Wabash Railroad—Lines West of Detroit
18: Wabash Railroad—Lines East of Detroit (Buffalo Division)
1: Western Pacific Railroad, The

Notes:

1—Authorization includes Dining Car Stewards.
1—Authorization includes Yardmasters.
3—Authorization includes only such employes covered by Northern Pacific trainmen's and yardmen's schedule.
4—Authorization includes conductors.
5—Authorization excludes yard foremen, Chicago Switching District.
6—Authorization includes footboard yardmasters, except Chicago Switching District, and car retarder operators.
7—Authorization includes tap room stewards.
8—Authorization includes yardmasters and assistant yardmasters at Denver, Colorado.
9—Authorization includes dining car stewards only.
10—Authorization covers engine foremen only and dining car stewards.
[fol. 263] 11—Authorization covers flagmen and yardmen (covered by agreement dated December 1, 1931.)
12—Authorization includes general yardmasters, assistant general yardmasters and yardmasters.
13—Authorization includes footboard yardmasters.
14—Authorization includes cafe car stewards.
15—Agreement covering dining car stewards includes Former El Paso & Southwestern System.

16—Authorization includes bus drivers (New Orleans) but authorization limited to 40-hour week only.

17—Authorization includes yardmen (Chicago Switching District).

18—Authorization covers road conductors and road brakemen only.

May 23, 1951.

For the Carriers:

(Illegible).

For the Organization:

C. W. Stanley, Brotherhood of Railroad Trainmen.

[fol. 264] EXHIBIT C

Southeastern Railroads

Which Have Authorized Their Representation By Southeastern Carriers' Conference Committee—1949 for the purpose of handling the proposals for changes in existing agreements covering trainmen, and certain other classes, as represented by the Brotherhood of Railroad Trainmen as set forth in a certain statement titled "Proposition March 15, 1949" which was served on such railroads on behalf of such employee groups under "Letter of Notice" dated March 15, 1949 and the proposals for revision and/or elimination of certain rules and practices, and for certain additional rules submitted by such respective railroads to such employee groups under formal notice filed on or between March 18 and 24, 1949.

Such authority being limited and relating only to those employee groups the rates of pay and working conditions of which are governed by existing schedule agreements, under which such employee groups are represented by the above named organization, and on behalf of which and to which groups such proposals were submitted.

Atlantic Coast Line
Atlanta & West Point, Western Railway of Alabama
Atlanta Joint Terminals
Central of Georgia
Charleston & Western Carolina

Chesapeake & Ohio-Chesapeake Dist. (a)
Clinchfield
Florida East Co-st (b)
[fol. 265] Georgia
Gulf, Mobile & Ohio
Jacksonville Terminal
Kentucky & Indiana Terminal
Louisville & Nashville
Nashville, Chattanooga & St. Louis
Norfolk & Portsmouth Belt Line
Norfolk & Western
Richmond, Fredericksburg & Potomac, Potomac Yard
Seaboard Air Line
Southern (c)
Alabama Great Southern (d)
Cin. Burnside & Cumberland River
Cin. New Orleans & Texas Pacific
Georgia Southern & Florida
Harriman & Northeastern
New Orleans & Northeastern
New Orleans Terminal
St. Johns River Terminal
Tennessee Central
Virginian

(a) Includes Hocking Division.
(b) In trusteeship. Any commitment on its behalf is subject to Court approval.
(c) Includes State University Railroad.
(d) Includes Woodstock & Blocton Railway.

(Illegible), For the Railroads, C. W. Stanley, For B. of R.T.

May 22, 1951.

[fol. 266] YARDMASTERS—INTERIM AGREEMENT, DATED 5/21/51, WITH AGREEMENTS "A" AND "B" ATTACHED:

DINING CAR STEWARDS—Agreement dated 5/21/51;

Omitted from the Printed Record, pursuant to Appellants' Amended Designation as to Printing Record, copied at page 3.

BRT Referee

Agreement

This Agreement made this 25th day of May, 1951, by and between the participating carriers listed in Exhibits A, B, and C, made a part hereof, and represented by the Eastern, Western and Southeastern Carriers' Conference Committees, and the employees shown thereon and represented by the Brotherhood of Railroad Trainmen through their conference committee.

Witnesseth:

This Agreement is supplemental to an agreement entered into this same date by the carriers and employees parties hereto with respect to wages and rules of road and yard service employees.

Article 1

The parties are in dispute with respect to the following:

[fol. 267] (1) Coupling and Uncoupling Air, Signal and Steam Hose.

The parties are agreed that the dispute as to this rule shall be submitted to a referee to be appointed by the President of the United States for decision.

(2) More Than One Class of Road Service.

The parties are agreed that the dispute as to the wording of this rule shall be submitted to a referee to be appointed by the President of the United States for decision.

Article 2

The proceedings before the referee shall be commenced in Washington, D. C., on June 25, 1951.

Article 3

The decision of the referee shall be final and binding on the parties, and shall become effective thirty (30) days from the expiration of the date the referee notifies the carrier and employee committees of his decision, and each carrier shall make its election within such period in accordance with the saving clause provisions of the proposed rules.

Signed at Washington, D. C., this Twenty-Fifth day of May, 1951.

For the Participating Carriers Listed in Exhibit A:

L. W. Horning, Chairman.

[fol. 268] For the Employees Represented by the Brotherhood of Railroad Trainmen:

W. P. Kennedy, President, Brotherhood of Railroad Trainmen.

For the Participating Carriers Listed in Exhibit A:

Frank J. Goebel, H. E. Jones, J. W. Oram, E. B. Perry.

For the Participating Carriers Listed in Exhibit B:

D. P. Loomis, Chairman, M. C. Anderson, E. J. Connors, E. B. Herdman, S. C. Kirkpatrick, G. E. Mallery, T. Short, J. J. Sullivan, William E. B. Chase, Vice-President, Brotherhood of Railroad Trainmen, F. Aldrich, Member, Wage-Rules Committee, K. H. Jones, Member, Wage-Rules Committee, J. Anderson, Member, Wage-Rules Com-[fol. 269] mit*Tee*, L. A. Borden, Member, Wage-Rules Committee, L. E. Chester, Member, Wage-Rules Committee, W. E. Grady, Member, Wage-Rules Committee, C. J. Jenkins, Member, Wage-Rules Committee, F. E. Kazmer, Member, Wage-Rules Committee, John J. Klein, Member, Wage-Rules Committee, C. E. Roberts, Member, Wage-Rules Committee, H. F. Sites, Member, Wage-

Rules Committee, B. L. Wedding, Member, Wage-Rules Committee.

For the Participating Carriers Listed in Exhibit C:

W. S. Baker, Chairman, F. A. Burroughs, Jr., F. K. Day, Jr., C. A. McRee, C. R. Hook, Jr.

[fol. 270] Case No. A-3437

Mediation Agreement

Brotherhood of Railroad Trainmen

and

Eastern Carriers' Conference Committee

Western Carriers' Conference Committee

Southeastern Carriers' Conference Committee

In settlement of differences as set forth in Docket Case No. A-3437 of the National Mediation Board and under the provisions of the Railway Labor Act, amended, and pursuant to a Memorandum of Agreement signed at the White House on December 21, 1950, it is mutually agreed that the questions in dispute are hereby disposed of by the execution of agreements as of this date, copies of which are attached hereto but not made a part hereof.

Signed at Washington, D. C., this Twenty-Fifth day of May, 1951.

For the Participating Carriers Listed in Exhibit A:

L. W. Horning, Chairman, Frank J. Goebel, H. E. Jones, J. W. Oram, E. B. Perry.

[fol. 271] For the Participating Carriers Listed in Exhibit B:

D. P. Loomis, Chairman, M. C. Anderson, E. J. Connors, E. B. Herdman, S. C. Kirkpatrick, G. E. Mallery, T. Short, J. J. Sullivan.

For the Participating Carriers Listed in Exhibit C:

W. S. Baker, Chairman, F. A. Burroughs, Jr., F. K. Day, Jr., C. A. McRee, C. R. Hook, Jr.

For the Employees Represented by the Brotherhood of Railroad Trainmen:

W. P. Kennedy, President, Brotherhood of Railroad Trainmen, William E. B. Chase, Vice-President, Brotherhood of Railroad Trainmen, F. Aldrich, Member, Wage-Rules Committee, K. H. Jones, Member, Wage-Rules Committee, J. Anderson, Member, Wage-Rules Committee, L. A. Borden, [fol. 272] Member, Wage-Rules Committee, L. E. Cesther, Member, Wage-Rules Committee, W. E. Grady, Member, Wage-Rules Committee, C. J. Jenkins, Member, Wage-Rules Committee, F. E. Kazmer, Member, Wage-Rules Committee, John J. Klein, Member, Wage-Rules Committee, C. E. Roberts, Member, Wage-Rules Committee, H. F. Sites, Member, Wage-Rules Committee, B. L. Wedding, Member, Wage-Rules Committee.

Witnessed:

John Thad Scott, Jr., Chairman, National Mediation Board.

Francis A. O'Neil, Jr., Member, National Mediation Board.

Lincoln Edwards, Member, National Mediation Board.

[fol. 273] NOTE RE EXHIBIT

Exception from moratorium union shop requests; Omitted from the Printed Record, pursuant to Appellants' Amended Designation as to Printing Record, copied at page 3.

DEFENDANT'S EXHIBIT #2

IN THE SUPERIOR COURT OF CHATHAM COUNTY, GEORGIA

CENTRAL OF GEORGIA RAILWAY COMPANY,

vs.

BROTHERHOOD OF RAILROAD TRAINMEN, ET AL.

SUIT FOR DECLARATORY JUDGMENT AND INJUNCTION

OPINION AND JUDGMENT ON GENERAL DEMURRERS

STATEMENT OF THE CASE

Central of Georgia Railway Company sued The Brotherhood of Railroad Trainmen, Local Lodge No. 721 of The Brotherhood, Z. P. Logan, President, W. A. Nealey, Secretary thereof, L. E. Chester of Florida, Individually and Deputy President, and others, and alleged The Brotherhood, an unincorporated association of Cleveland, Ohio, is the accredited bargaining agent of the "Brotherhood";

That there are about four hundred and fifty (450) trainmen and yardmen employed by the Railroad Company who reside in Georgia, Alabama and Tennessee who are members, and defendants named in the petition are representa- [fol. 274] tives of the class consisting of all the trainmen and all the yardmen employed by the Railroad Company who are members of the "Brotherhood."

That in 1950, the Class I railroads of the United States including Central of Georgia Railway Company, and the operating Brotherhoods, including those mentioned in the petition, bargained for months on certain matters but failed to agree. The Federal Mediation Board was called in under the Railroad Labor Act, but failed to get the disputants into accord. Then the President of the United States appointed an Emergency Board under authority of the Railway Labor Act, which made its findings.

The Brotherhoods declined to accept these findings, and asked the President to take control of the railroads.

On December 21, 1950 the disputants agreed upon a memorandum in which they set forth certain questions on which they would continue to bargain.

On May 25, 1951, they agreed upon wages, and rules applicable to road trainmen, yardmen, yardmasters, stewards, etc., and for a five-day work week, but did not agree upon the question of "more than one class of road service" and "air hose coupling and uncoupling." As to these subjects, on the same day they agreed (plaintiffs' Exhibit "A") that the questions still in contest should be referred to a Referee to be appointed by the President of the United States, and they agreed that "the decision of the Referee shall be final and binding on the parties, and shall become effective thirty (30) days from the expiration . . . of notice [fol. 275] to the carrier and the employees' committees . . . of the decision, and each carrier shall make its election within such period in accordance with the saving clause provisions of the proposed rules" . . .

The President appointed as Referee George Cheney, Esquire, who held hearings, and on August 1, 1951, released his award, which is in the Record by Amendment as Plaintiffs' Exhibit "D".

The statement of facts and findings of the Referee on the questions at issue appear on pages 27 to 30 in the Referee's findings (Exhibit "D").

The case was argued and submitted on General Demurrer, to the Petition as amended.

There were two main questions involved, viz: (1) Jurisdiction of Subject Matter, and (2) Questions on the Merits of the case.

Questions to be Determined

The General Demurrer contains six (6) grounds: The fourth and fifth grounds deal with the question of jurisdiction of this Court over the subject matter. No question of territorial jurisdiction, i.e., venue, is involved.

Opinion of the Court

Jurisdiction

Counsel for the contending parties have dealt with the jurisdictional feature out of sequence, we will follow their [fol. 276] order and will consider first the jurisdictional question as stated in the fourth and fifth grounds of General Demurrer.

The questions here raised are not novel but have several times been considered by eminent authority.

The Georgia decisions according to Plaintiffs hold that in suits involving the interpretation or application of agreements between a carrier and its employees, the Georgia Courts have jurisdiction.

Evans vs. L & N RR Co. 191 Ga., 395.

Central of Ga. v. Culpepper, 209 Ga. 844.

Defendants' attorneys cite to us respectable authority to the contrary that this jurisdiction is exclusively in the United States Courts.

Steele v. L & N RR Co., 323 U.S. 192.

Green v. Obergfell, 121 F. 2d, 138.

Order of Ry. Conductors v. Sou. Railroad 70 U.S. S. Ct. 585.

Slocum v. Delaware Ry. Co., 70 S. Ct., 577.

The opinions of both Courts are impressive.

However, trial Courts of this State are bound to follow the State Supreme Court, until reversed or set aside, and the Georgia Supreme Court having spoken last on the subject, we must hold with the plaintiffs upon the question of jurisdiction.

[fol. 277] The Merits of the Case

It appears that a proper interpretation of the finding of Referee Cheney will control this case.

The agreement under which the reference to Mr. Cheney was had, provided (Article 3, of Exhibit B), that the decision of the Referee shall become effective 30 days from the date of the Referee's findings, and each carrier shall make its election within that period in accordance with the saving clause provision of the proposed rules.

For Rule see award of Referee Cheney (Page 30 of Plaintiffs' Exhibit "D"), viz:

"A new rule should be drafted and inserted in the principal agreement between the parties to this proceeding dated May 25, 1951, which should read as follows: "Rules, agreements, interpretations or practices which prohibit or restrict the use of yardmen to couple or uncouple air, steam and signal hose, shall be modified so that there will be no

prohibitions or restrictions on yardmen performing such work and no payment therefor will be made but where rules, agreements, interpretations or practices require payment to yardmen under conditions stated therein for coupling or uncoupling air, steam and signal hose, such rules, agreements, interpretations or practices shall be changed to provide for the payment of only 95 cents."

"Individual carriers may elect to accept this rule or retain their present rules or practices without modification, by so notifying their General Chairman prior to September [fol. 278] 1, 1951, and if accepted the date of such notification shall become the effective date."

The entire finding of the Referee appears in Exhibit "D".

On September 1, 1951, the Assistant to the Vice-President and General Manager of the Central of Georgia Railway, notified the General Chairman of the "Brotherhood" that his company rejected the proposed new rule with respect to yardmen coupling and uncoupling air, steam and signal hose in this language.

"In accordance with this decision and award, you are hereby advised that the Central of Georgia Railway Company desires to and will retain its practices without modification with respect to Item (1) above."

Compare Exhibit Art 3 of Exhibit A. Letter from Central of Georgia Railway Company, Exhibit B. Last page of award of Referee Cheney, Exhibit D and Paragraph 12 of the petition.

In our opinion, the letter from the Central of Georgia Railway Company of September 1, 1951 (quoted above) takes out of the award of Referee Cheney, all findings with respect to the coupling and uncoupling of air, steam and signal hose on the Central of Georgia Railway, and throws that subject back on its status occupied before the award.

It would be manifestly unfair to permit the Railroad to reject the award, as it affected these defendants, and then claim that a prior custom on this subject has become a [fol. 279] part of the contract by reason of the Cheney award.

The question at issue was unsettled before the award, and by reason of the Railroad's letter of September 1st, 1951 is still unsettled, in our opinion.

Final and Binding

The Court does not wish to leave an impression that it has approved the entire contract as written by Referee Cheney.

Petitioner argues that the finding of the Referee is "forever binding", or is "to run indefinitely", and the rules established, as construed by plaintiff are to continue forever.

It has long been a rule in Georgia, and I believe, in most states, that employment contracts are to be limited as to time of duration and territory.

In Bentley v. Smith et al., 3 Ga. App. 242, Justice Russell in writing the opinion stated:

"4. A contract for permanent employment continues indefinitely, and is terminable by either of the parties at any time."

To the same effect is Green v. Obergfell, 121 Fed 2d 46, 138 A.L.R. 253, see page 284; and notes.

In Stelling v. Richmond County, 81 Ga. App. 571, on page 576, the Court citing the above case stated:

[fol. 280] "He alleges that he was a 'permanent employee'. This is perfectly consistent with his indefinite status for, in the absence of specific contract or legislative enactment, 'permanent' employment is indefinite, and may be terminated by either party at any time."

It is worthy of note that in Title 45, Section 158 (j) dealing with agreements to arbitrate and what such agreements shall contain, the following is provided:

"shall provide for the date from which the award shall become effective and shall fix the period during which the award shall continue in force." (underscoring added.)

We cannot follow plaintiff's claim that Mr. Cheney's award is "final and binding and not subject to change, modifications or negotiation at the demand of any party"

(underscoring added), as claimed by plaintiff on page 12 of its Petition.

The posi-ion of petitioner does not appeal to this Court of equity, where a perpetual injunction is invoked that would hinder and impede occupational improvement, as well as being without law or sufficient facts to sustain it.

Judgment

The Court thereupon overrules the fourth and fifth grounds of General Demurrer, sustains the first, second, third and sixth grounds of General Demurrer and dismisses the case.

[fol. 281] The Temporary Restraining Order granted May 26, 1954, is hereby set aside and revoked.

And It Is So Ordered.

This July 29, 1954.

(S.) David S. Atkinson, Judge, Superior Court, E.J.C. of Georgia.

In United States District Court

Findings, Conclusions and Judgment on Plaintiff's Motion for Preliminary Injunction

This case having come on for hearing on Plaintiff's motion for preliminary injunction before the United States District Judge for the Southern District of Georgia in the Post Office Building at Brunswick, Georgia, on February 28th, 1955 at 11:00 o'clock A. M. and the Court having heard and considered the Plaintiff's verified petition, and evidence of all parties, and having examined all exhibits, and having heard argument by Counsel for all parties;

The Court reached the following findings of fact and conclusions of law, and enters thereon the following judgment.

Findings of Fact

1

The Central of Georgia Railway Company, the Plaintiff in this action, is a corporation chartered under the laws of [fol. 282] Georgia, with its principal office and place of

business in Chatham County, Georgia. It is a common carrier of freight and passengers, both in intrastate and interstate commerce.

The Defendants in this action are the following:

(a) The Brotherhood of Railroad Trainmen, an unincorporated labor union, with its principal office and place of business in Cleveland, Ohio, doing business in Chatham County, Georgia and represented there by the Officers of Local Lodge No. 721, Brotherhood of Railroad Trainmen:

(b) Local Lodge No. 721 which is an unincorporated Local Lodge of the Brotherhood of Railroad Trainmen which has its principal office and place of business in Chatham County, Georgia.

(c) Z. P. Logan who is President of said Local Lodge No. 721 is a resident of Chatham County, Georgia an employee of the Central of Georgia Railway Company, and a member of Defendant Class described in sub-paragraph 2 (g) below;

(d) W. A. Nealey who is Secretary of Local Lodge No. 721, a resident of Chatham County, Georgia, an employee of the Central of Georgia Railway Company, and a member of Defendant Class described in sub-paragraph 2 (g) below;

(e) L. E. Chester, individually, and as Vice-President of the Brotherhood of Railroad Trainmen, who is a resident of Florida;

(f) B. G. Byington, W. B. English and J. W. Shirley residents of Bibb County, Georgia and J. G. Pardue, a [fol. 283] resident of Chatham County, Georgia, who are named Defendants individually, and, respectively, as General Chairman, Vice Chairman, Secretary and member of the Grievance Committee of the Brotherhood of Railroad Trainmen on the Central of Georgia Railway Company, and are members of Defendant Class described in sub-paragraph 2 (g) below:

(g) There are also named as defendants the Class of employees of the Central of Georgia Railway Company numbering approximately 450 men known as trainmen and yardmen who are represented by said Brotherhood of Railroad Trainmen and said Local Lodge No. 721 Brotherhood

of Railroad Trainmen. All of the aforesaid Defendants are named as representatives of this Craft of employees.

3

The Defendant Craft of employees on the Central of Georgia Railway Company, known as Trainmen and yardmen, are represented by the Brotherhood of Railroad Trainmen as the sole and exclusive bargaining representative under the Railway Labor Act. All of the said Class are severally interested in the matter presented to this Court in this cause for adjudication, and there is presented a common question of law and fact affecting their several rights, and common relief is sought against each member of the class. Said class is adequately represented by the individual named Defendants, and the selection of the individual named Defendants will fairly insure the adequate representation of that class.

[fol. 284] 4

The Defendants were properly served with complaint, summons, motions and orders, had proper notice of this hearing; and are properly before this Court.

5

The Central of Georgia Railway Company, Plaintiff, presented to this Court on Thursday evening February 24, 1955, a motion for a temporary restraining order and preliminary injunction seeking to restrain the Defendant from endeavoring to negotiate a cancellation, modification, change or revision of a certain arbitration award called the Cheney award, dated August 1, 1951, and from endeavoring to negotiate or from demanding a contract provision, referred to in railroad parlance as "a rule" with the Central of Georgia Railway Company prescribing extra compensation to Defendant Class of employees for coupling or uncoupling air, steam or signal hose; and further from calling a strike, work stoppage, either directly or indirectly, and from striking or consummating a work stoppage, either directly or indirectly, on the lines of the Central of Georgia Railway Company because of any feature

of the controversy concerning the Cheney award which has been referred to and was before the National Railroad Adjustment Board, or because the Central failed or refused to acquiesce in the Defendant's demands for a revision of the Cheney award or a revision of the present labor contract so as to produce a special arbitrary payment for coupling or uncoupling hose in addition to their normal wage as compensation. The verified complaint in that mat-
[fol. 285] ter and testimony of Assistant Director of Personnel, Thomas Parker, Jr., was considered by the Court, and a temporary restraining order was issued enjoining the Defendants in accordance with said motion, the order reading that said restraining order would expire at 8:40 P.M., March 1, 1955, unless extended.

6

Also, at the same time, the hearing on the motion for preliminary injunction was assigned at the Post Office Building, in Brunswick, Georgia, at 11 o'clock, A. M. Monday, February 28th, 1955.

7

The complaint in this cause, together with the motions, temporary restraining order, and order assigning hearing on motion for preliminary injunction were filed in the office of the Clerk of the District Court of the United States for the Southern District of Georgia, in Savannah, Georgia, on the following day, Friday February 25, 1955, and were duly served on that day.

8

The original controversy between the Central of Georgia Railway Company and these Defendants which was submitted to arbitration before Referee Cheney concerned whether or not certain trainmen should be required as one of their basic duties to couple and uncouple, air, steam and signal hose, and as a related question, whether or not each
[fol. 286] member of a train crew should be paid an arbitrary sum, in addition to their daily basic wage when any one member of the crew was required to perform this function.

9

In February 1949 the Brotherhood of Railroad Trainmen at the National level, made demands against the railroads of the Nation, at the national level, under the provisions of the Railway Labor Act for many benefits. The railroads made counter proposals to the Union. All of the negotiations between the Union and the Railroads were conducted by committee on the national level. The services of the National Mediation Board were invoked on January 16, 1950, to no avail. Then President Truman appointed an Emergency Fact Finding Board which investigated the disputes and made recommendations which were rejected by the Union. Finally, on May 25, 1951, all but two items in dispute were settled by collective bargaining, induced to a degree through the conciliation efforts of a representative of the National Mediation Board; and were to a collective bargaining agreement dated May 25, 1951.

10

By agreement, the two remaining items in dispute were submitted to arbitration before a person designated a "Referee" to be appointed by the President of the United States. One of these items was the hose coupling question.

11

The agreement under which the parties submitted the hose coupling question to arbitration recited that the de-[fol. 287] cision of the Referee "shall be final and binding on the parties.

12

President Truman appointed George Cheney as Referee to consider the two disputes. After hearing extended testimony and argument, Referee Cheney handed down his award on August 1, 1951, as follows:

"After due consideration, and after being fully advised in the premises, and upon a preponderance of the proof received in this proceeding, the undersigned Referee makes the following Decision and Award, on the first issue ap-

pearing in the ancillary agreement dated May 25, 1951, which was signed by the parties to this proceeding:

"A new Rule should be drafted and inserted in the Principal agreement between the parties to this proceeding dated May 25, 1951, which should read as follows: 'Rules, agreements, interpretation or practices which prohibit or restrict the use of yardmen to couple or uncouple air, steam and signal hose, shall be modified so that there will be no prohibitions or restrictions on yardmen performing such work and no payment therefor will be made but where rules, agreements, interpretations or practices require payment to yardmen under conditions stated therein for coupling or uncoupling air, steam and signal hose, such rules, agreements interpretation or practices, shall be changed to provide for the payment of only 95 cents.

"Individual carriers may elect to accept this rule or retail their present rules or practices without modification, [fol. 288] by so notifying their General Chairman prior to September 1, 1951, and if accepted the date of such notification shall become the effective date.

"The decision and award of the undersigned Referee upon the two (2) issues appearing in the ancillary agreement dated May 25, 1951 and which was signed by the parties to this proceeding, shall be final and binding upon said parties, and the same shall become effective on the thirtieth day following the date the Referee notifies the Carrier and Employee Committee of his Decision and Award, and each Carrier shall make its election within such period, in accordance with the savings clause provisions of the proposed rules."

13

On August 16, 1951, the Central of Georgia Railway Company notified the Defendants that in accordance with the award of the Arbitrator, the Central elected to continue the present practice, which practice was to require the trainmen to perform the coupling function as one of their basic duties for which they are compensated by their basic daily wage.

14

On November 28, 1953, the Defendants on a local level against the Central of Georgia Railway Company, despite the Cheney Award, insisted upon the following contract provision;

"Amendment to Article 41, Coupling and Uncoupling of Air, and/or Steam Hose, etc."

[fol. 289] "Foreman and Switchmen employed in yards, and trainmen employed on switch local assignments and/or local freight assignments will be paid an arbitrary of $1.50 per day or trip regardless of miles or hours involved in the day or trip.

"As a condition of this arbitrary allowance, said employee may be required to couple and/or uncouple air brakes, signal and steam hose; couple or uncouple vestibule curtains".

15

The Central of Georgia Railway Company took the position that this demand had been settled adversely to the Defendants by the common law arbitration award by Referee Cheney. The parties could not agree.

16

Thereupon, the National Mediation Board sent a Mediator to Savannah to mediate this dispute. The mediation service was unproductive and as required by the Railway Labor Act, the Mediator suggested arbitration. The Central of Georgia Railway Company told the Mediator that the Central would be agreeable to arbitrate this dispute as recommended by the Mediator. However, despite the willingness of the Central to arbitrate, arbitration could not be consummated.

17

Thereupon, the mediation services were withdrawn on May 25, 1954, the Central received a telegram from the National Mediation Board advising that the Brotherhood [fol. 290] of Railroad Trainmen had called a strike on the Central of Georgia Railway Company for 5:00 P. M., Fri-

day May 28, 1954 unless the matters in dispute were satisfactorily adjusted prior to that time.

18

Faced with this threatened strike and desiring to have the effect of the Cheney Award adjudicated, the Central of Georgia Railway Company filed its petition on May 26, 1954, in Chatham Superior Court for a declaratory judgment and injunctive relief against the same Defendants named in the instant complaint, seeking to have the Superior Court of Chatham County, Georgia, take jurisdiction of the matter, enter a declaratory judgment as to whether or not the Cheney Award permanently settled the matter committed to Referee Cheney and issue a temporary restraining order, interlocutory injunction, and permanent injunction, preventing a strike on the demand for the rule change noted above, pending a decision of the case.

19

The Superior Court of Chatham County took jurisdiction, granted a temporary restraining order but denied the interlocutory injunction after hearing general demurrers of the Defendants to the petition of the Central of Georgia. At the hearing, the Defendants attacked the petition on the merits and challenged the jurisdiction of the Chatham County Superior Court, arguing that the matter submitted to the State Court was within the exclusive jurisdiction of the National Railroad Adjustment Board under the Railway Labor Act.

[fol. 291] 20

The Trial Court took jurisdiction of the cause but dismissed the case on the merits.

21

On appeal the defendants urged before the Supreme Court of Georgia that this matter was within the exclusive jurisdiction of the National Railroad Adjustment Board and that the State Courts had no jurisdiction. The Supreme Court of Georgia rendered a majority opinion in that case

(Central of Georgia Railway Company v. Brotherhood of Railroad Trainmen, et al., January 10, 1955, 211, Ga. 274) sustaining the contentions of the Defendants and holding that the matter in controversy was within the exclusive jurisdiction of the National Railroad Adjustment Board under the Railway Labor Act.

22

The judgment of the Supreme Court of Georgia was made the judgment of the trial Court on January 31, 1955. However before this, on January 21, 1955 the Central of Georgia Railway Company submitted the controversy to the National Railroad Adjustment Board under the provisions of the Railway Labor Act.

23

The matter in controversy submitted to the State Court is substantially the same matter which has been submitted to the National Railroad Adjustment Board by the Central of Georgia Railway Company, and is substantially the [fol. 292] same as the controversy reflected in the instant complaint.

24

In this submission to the Adjustment Board, the Central took the position that the Cheney Award had settled adversely to the Defendant's contentions their demands for the proposed rule change of November 28, 1953, quoted in paragraph 14, supra. The aforesaid proposed rule change was the one that gave rise to the aforesaid State Court proceeding in which the Defendants took the position that the matter was subject to the exclusive jurisdiction of the National Railroad Adjustment Board.

25

After the Defendants were notified by the National Railroad Adjustment Board that the submission had been received and filed and that the Defendants would be required to file their reply under the Railway Labor Act not later than February 23, 1955, the Defendants requested that the National Railroad Adjustment Board grant an extension

of thirty days from February 23, 1955, within which Defendant Union would be required to answer the submission. This request was granted.

26

However, the defendants called a strike to force upon the Central of Georgia Railway Company their contentions in this controversy for 6:00 Friday morning. February 18, 1955, "subject to a satisfactory settlement of the pending hose coupling issue."

[fol. 293] 27

After the National Mediation Board tendered its services on February 16, 1955, and requested that the Defendants "postpone the strike date pending mediation". On the same day, the Defendants postponed the strike "pending mediation proceedings."

28

The National Mediation Board sent a Mediator to Savannah to make further efforts to bring the parties to a settlement of the dispute. The mediation efforts were unsuccessful, although the Central of Georgia Railway Company again indicated a willingness to settle the dispute by arbitration, as recommended informally by the Mediator. The Mediator indicated that the Defendants would not be agreeable to arbitrating the dispute.

29

The efforts of the Mediator to bring about a settlement of this dispute were discontinued on Thursday afternoon February 24th although formal telegraph notice of the withdrawal of the mediation service was not received until Friday afternoon, February 25, 1955.

30

The Central of Georgia Railway Company was threatened with an immediate system-wide strike on this issue on the afternoon of Thursday, February 24, 1955, and also feared wildcat strike at that time. Defendants had advised the Mediator prior to Thursday evening, February 24,

[fol. 294] 1955, that if Mediation did not produce a settlement satisfactory to the Defendants, that a strike would be called, and that wildcat strikes were a distinct possibility.

31

On Thursday, February 24, 1955 the Central of Georgia Railway Company was threatened with an immediate system-wide strike which would completely stop the operations of the company, and completely disrupt the Central's inter and interstate passenger and freight service. Such a threatened strike would have resulted in immediate and substantial irreparable injury, loss and damage to the Central.

32

Such a strike would have resulted in monetary damages to the Plaintiff far in excess of $3000. The daily loss in gross revenue alone would exceed $100,000. The strike would cause the patrons of the Central of Georgia Railway Company to patronize competitive carriers and the degree of permanent loss of business is incalculable.

33

Such a strike conceivably would be disastrous to all of the employees of the Central, as well as the Central itself, the degree of damage depending upon the duration and violence of the strike. Many disinterested employees would be laid off. Also the area served by the Central would be irreparably damaged. The Central would be prevented from performing its obligations as a common carrier.

[fol. 295] 34

The Central of Georgia Railway Company was threatened with unlawful acts by the Defendants which would result in damage to its property and which could be prevented only by the granting of the injunctive relief sought in this action. Immediate and substantial irreparable loss, injury and damage was threatened to Plaintiff's property.

35

Any possible injury which could result to the Defendants from the granting of the preliminary injunction in this case would properly be protected by adequate surety bond and appropriate records, and the potential injury to the Defendants resulting from such injunctive relief is infinitesimal compared to the threatened injury to the Plaintiff.

36

Public Officers charged with the duty to protect Plaintiff's property could not possibly furnish protection adequate to prevent the threatened injuries.

37

The Plaintiff volunteered to protect the Defendants by maintaining adequate hose coupling records and by posting bond.

[fol. 296] CONCLUSIONS OF LAW

1

Venue in this case is properly laid in the District Court of the United States for the Southern District of Georgia, Savannah Division.

2

This Court has jurisdiction over this complaint because this is an action arising under the laws of the United States regulating commerce within the intent of Title 28 U. S. C. Sec. 1331 and 1337. The amount in controversy greatly exceeds the sum of $3,000 exclusive of interest and costs. The Particular laws of the United States under which this action arises are the Railroad Labor Act, Title 45, U. S. C. Sec. 151, et seq. and the Interstate Commerce Act, Title 49 U. S. C. Sec. 1, et seq.

3

The Defendants Brotherhood of Railroad Trainmen is the duly authorized exclusive bargaining representative of Defendant Class under the Railway Labor Act.

4

Prior to the bringing of this action, except for final determination by the National Railroad Adjustment Board, Plaintiff had exhausted all of its administrative remedies, including the mediation procedure required by the Labor Act, Title 45 U. S. C. Sec. 155 et seq.

[fol. 297]

5

The National Railroad Adjustment Board under the Railway Labor Act, Title 45, U. S. C. 151, et seq. has exclusive jurisdiction of the controversy described in this complaint, which has been referred to the National Railroad Adjustment Board by the Plaintiff herein. The Supreme Court of Georgia has held that such jurisdiction is exclusive in a case between these same parties involving substantially these same issues. (Central of Georgia Railway Company v. Brotherhood of Railroad Trainmen, 211 Ga. 274.) The Defendants impliedly agreed that the National Railroad Adjustment Board has jurisdiction in this case, by the evidence submitted in this case, including the claims of the Defendants that the National Railroad Adjustment Board had jurisdiction in the identical case in the Superior Court of Chatham County, Georgia referred to in this suit.

6

The threatened strike on an issue pending before the National Railroad Adjustment Board and over which the said Board has exclusive jurisdiction is violative of the Railroad Labor Act (Title 45 U.S.C. 151 et seq.) The main issue before the National Railroad Adjustment Board is whether or not the rule change which the Defendants seek to enforce by strike, would be violative of the Cheney arbitration award and the Defendants agreement to submit the matter to Referee Cheney.

7

The controversy concerning which the strike is threatened and which is outlined in the instant complaint is, sub-

[fol. 298] stantially the same controversy which was before the Supreme Court of Georgia and which has been sub-

mitted to the National Railroad Adjustment Board for determination by the Plaintiff, Central of Georgia Railway Company.

8

Plaintiff is facing certain and immediate, substantial and irreparable injury, loss and damage if this preliminary injunction is not issued and Plaintiff has no adequate remedy at law.

9

This Court has jurisdiction to issue a preliminary injunction in this case restraining the Defendants from striking to compel the Plaintiff Railroad Company to accept Defendant's demands, in order to prevent impending immediate irreparable injury, in a controversy over which the National Railroad Adjustment Board has exclusive jurisdiction, which has been referred to the National Railroad Adjustment Board for decision and which is before said Adjustment Board for decision at the time the injunction is sought.

The Norris-LaGuardia Act was not intended by Congress to deprive a District Court of jurisdiction to maintain the status quo by Preliminary injunction to prevent immediae irreparable injury, loss or damage, in a controversy over which the National Railroad Adjustment Board has jurisdiction, which has been submitted to the Adjustment Board for determination and is before the National Adjustment Board for decision. The Railway Labor Act [fol. 299] was amended in 1934, some two years after the Norris-LaGuardia Act (Title 29 U. S. C. 101 et seq.) and was intended by Congress to provide for an orderly settlement of grievances and disputes in the Railroad industry. It was designed to minimize and prevent wherever possible the hardship, tragedy and economic chaos, and irreparable injury which inevitably and necessarily result from strike; which does severe injury to the employee and irreparable damage to the Railroad Company and the general public. The amended Railway Labor Act was designed to prevent interruptions in interstate commerce caused by railroad strikes wherever possible within the provisions of the Act. Congress intended and the Railroad Labor Act required

that the railroad companies and the representatives of the railroad employees should make every effort to settle their differences between themselves in accordance with the procedure set up by the Railroad Labor Act. If settlement could not be reached thereby, Congress intended and the Act requires that such matters as come within the exclusive jurisdiction of the National Railroad Adjustment Board should be referred to that body for decision before either side resorted to self help. This conclusion is grounded upon the obvious purposes of the Railway Labor Act as expressed in the Act. Sec. 1a (Title 45 U. S. C. Sec. 151a); Sec. 2 First (Title 45 U. S. C. A. Sec. 152 First); Sec. 2 Second (Title 45 U. S. C. A. Sec. 152 Second) and Sec. 3 (i) Title 45 U. S. C. A. Sec. 153 (i). See also the Legislative History of the 1934 amendment to the Railway Labor Act (Senate Report No. 1065 (73rd Congress, Second Session, pp. 1-2; House Report No. 1944, 73 Congress Second Session, p. 2 et seq.) See also Elgin J & E. R. Co. v. Burley, 325 U. S. 711; 89 L. Ed 1886; 65 S. Ct. 1282.

[fol. 300] 10

Although no reported case "on all four" with the instant case came to the attention of the Court, the decided cases support the above conclusions.

Perhaps the parent case of the United States Supreme Court on this subject is Virginian Railroad v. System Federation, 300 U. S. 515; 81 L. Ed 799, 57 S. Ct 592, which involved a case brought by a union to compel by injunction a railroad company to recognize it as the authorized employee representative and for other relief. There the Defendant railroad sought to invoke the Norris-LaGuardia Act as a bar to injunctive relief in the Federal Courts. The Court accepted the argument that the Railway Labor Act which was enacted after the Norris-LaGuardia Act dealt with the specific problem and would prevail, saying:

"The power of Congress over interstate Commerce extends to such regulations of the relations of rail carriers to their employees as are reasonably calculated to prevent the interruption of interstate commerce by strikes and their attendant disorders".

"It suffices to say that the Norris-LaGuardia Act can effect the present decree only so far as the provisions are found not to conflict with those of Sec. 2 Ninth of the Railway Labor Act, authorizing the relief which has been granted. Such provisions cannot be rendered nugatory by the earlier and more general provisions of the Norris-LaGuardia Act".

[fol. 301] In the case of Order of Railway Conductors v. Pitney, 326 U. S. 561, 90 L. Ed. 318, 66 S. Ct 322, it was held at pp 567 and 568 of 326 U. S.:

"But the Court should not have interpreted the contracts for the purpose of finally adjudicating the dispute between the Unions and the railroad. The dismissal of the cause should, therefore, be stayed by the District Court so as to give an opportunity for application to the Adjustment Board for an interpretation of the agreement".

The decision in the Pitney case, supra, clearly indicates that a District Court of the United States has jurisdiction to maintain the status quo by injunction pending determination of an issue submitted to the National Railroad Adjustment Board and within its equitable discretion it may grant or deny such relief.

For other decisions of the Supreme Court of the United States which would seem to support this conclusion, see Brotherhood of Railroad Trainmen v. Toledo, Peoria & Western R.R. 321 U. S. 50, 88 L. Ed. 64 S Ct 514; Brotherhood of Railroad Trainmen v. Howard 343 U. S. 768; 96 L Ed 1283 72 S Ct. 1022 Graham v. Brotherhood of L. F. & E. 338 U. S. 232, 94 L Ed 22 70 S. Ct. 14.

One of the latest Circuit Court decisions bearing on this point is the case of Rolfe's v. Dwellingham, et al. 198 F. (2d) 591 (8th Circuit) (no record of appeal). In this case the District Court issued an injunction requiring the Trustee of the Missouri Pacific Railroad Company to refrain from displacing "waiters-in-change" pending a decision by the National Railroad Adjustment Board, or [fol. 302] pending a reasonable time within which the Matter might be submitted to the Board. The Circuit Court sustained the jurisdiction of the District Court to grant such relief, holding:

"The Railway Labor Act contemplates that the Boards which it sets up shall function through process of mediation and interpretation of disputed contracts to minimize conflicts and interruptions of commerce.

"Also, we consider the decisions of the Supreme Court on Graham V. Bro. of L. F. & E. 338 U. S. 232, 70 S Ct 14, 94 L. Ed. 22; Virginian R. Co., v. System Federation No. 40, 300 U. S. 515, 57 S. Ct. 592 81 L. Ed 789 Steele v. Louisville & Nashville R. Co. 323 U. S. 192 65 S. Ct. 226 89 L. Ed 173; and Tunstall v. Bro. of L. F. & E., 323 U. S. 210 65 S Ct 235, 89 L. Ed 187, equally conclusive that the Norris-LaGuardia Act does not deprive the Federal Courts of power to issue such an injunction as has been issued here in aid of the administrative board and to preserve the right of the waiters-in-charge to resort to the administrative procedure provided by the Congress under the Railway Labor Act."

In Sadler v. Union R. Co., 123 F. Sup. 625, the District Judge for the Western District of Pennsylvania held that it had jurisdiction to restrain enforcement of an award and to restore the status quo pending the submission of a dispute to the National Railroad Adjustment Board or National Mediation Board.

In the case of Railway Employees Co-op Assn. et al. v. A. B. & C. R. Co., 22 F. Sup 510 (Georgia District) (no record of appeal) Judge Underwood restrained a railroad [fol. 303] company pending a decision by the National Mediation Board of the proper bargaining representatives of the employees. He held that the Railway Labor Act created property rights in the employees which will be protected by a Court of equity despite the Norris-LaGuardia Act.

In the case of U. S. v. Brotherhood of L. E. (1948) (D. C. Dis. of Col.), 79 F. Sup 485; 174 F. (2d) 160; Cert. den 335 U. S. 867; 93 L. Ed 412, 69 S. Ct. 137, The District Court granted the United States as a permanent injunction restraining a railroad strike after mediation under the Railway Labor Act had failed, holding that the Norris-LaGuardia Act could not prevent injunctive relief in such a situation.

In the case of M. K. T. R. Co., v. Bro. of Ry and S. S. Clerks, 88 F. (2d) 302 (C. A. 7 1951) (No record of appeal)

the Court held that the District Court did not abuse its discretion in granting an injunction on behalf of the railroad to enjoin enforcement of separate awards of the National Adjustment Board, pending a final determination of a controversy before the National Railroad Adjustment Board in regard to the inconsistent awards.

11

The granting of the preliminary restraining order in this case will not impinge or restrict the actions of the Defendant employees in promoting their own interest against the Plaintiff excepted in the restricted sphere of the controversy before the National Railroad Adjustment Board. Within that sphere, the Defendants will be protected by adequate records and bond.

[fol. 304] The decree in this case will be restricted generally to restraining a strike by Defendants to force the Plaintiff to agree to the contract provision proposed by Defendants on November 28, 1953, or any similar provision. (See Par. 14 of findings). Defendants argue that the restraining order should not apply to "trainmen" as distinguished from "yardmen" asserting that the Cheney Award applies only to "yardmen". True the award itself mentions only "yardmen" however Cheney's findings deal with both "trainmen" and "yardmen". Also the Plaintiff's case in the State Court and before the National Railroad Adjustment Board involves both "yardmen" and "trainmen" as covered in Defendant's proposed contract provision of November 28, 1953. It would be improper for this Court to interpret the Cheney Award to decide the dispute between the parties as to whether the award applies to both "trainmen" and "yardmen", or only to "yardmen". That is one of the issues before the Adjustment Board. Both "trainmen" and "yardmen" are inseparately interwoven in this dispute. Both will be enjoined and both will be protected by bond and appropriate record.

Thus it is concluded that this is a proper case in which the District Court of the United States should, in the exercise of its discretion, grant a preliminary injunction, maintaining the status quo in a controversy, where this Court concludes that the National Railroad Adjustment Board

has exclusive jurisdiction; where said dispute is currently before said Board in accordance with the Railway Labor Act; where irreparable injury will result to the Railroad, the general public, and perhaps the employees, if the relief is denied; and where the employees' rights can be adequately protected by appropriate records and bond.

[fol. 305] IN UNITED STATES DISTRICT COURT

JUDGMENT—MARCH 10, 1955

Based upon the foregoing findings of fact and conclusions of law, and in order to preserve the status quo of the controversy now before the National Railroad Adjustment Board,

It Is Considered, Ordered and Adjudged:

1

Pending further order of this Court and pending a final hearing in this case, the Defendants in this cause and each of them, their agents, representatives and all parties acting through or under them, or through their order, be and they are hereby restrained and enjoined by this preliminary injunction from threatening to or from calling a strike, work stoppage, or picketing, system-wide or local, of any kind or character, or from using any similar device, either directly or indirectly, through themselves, their agents or others, against the Central of Georgia Railway Company, and from striking, stoppage of work, picketing or from using any similar device, in an effort to or designed or intended:

A. To compel the Plaintiff to agree with the Defendants to a cancellation, modification, change or revision of the award of Referee George Cheney dated August 1, 1951 to wit:

"After due consideration and after being fully advised in the premises, and upon a preponderance of the proof received in this proceeding, the undersigned Referee makes the following decision and award, on the first issue appear-
[fol. 306] ing in the ancillary agreement dated May 25, 1951, which was signed by the parties to this proceeding;

"A new rule should be drafted and inserted in the principal agreement between the parties to this proceeding dated May 25, 1951, which should read as follows: Rules, agreements, interpretations or practices which prohibit or restrict the use of yardmen to couple or uncouple air, steam or signal hose, shall be modified so that there will be no prohibitions or restrictions on yardmen performing such work and no payment therefor will be made, but where rules, agreements, interpretations or practices require payment to yardmen under conditions stated therein for coupling or uncoupling, air, steam and signal hose, such rules, agreements, interpretations or practices shall be changed to provide for the payment of only 95 cents.

"Individual carriers may elect to accept this rule or retain their present rules or practices without modification, by so notifying their General Chairman prior to September 1, 1951 and if accepted the date of such notification shall become the effective date.

"The decision and award of the undersigned Referee upon the two (2) issues appearing in the ancilliary agreement dated May 25, 1951, and which was signed by the parties to this proceeding, shall be final and binding upon the said parties, and the same shall become effective on the thirtieth day following the date the Referee notifies the Carrier and Employee Committees of his decision and Award, and each Carrier shall make its election within such [fol. 307] period, in accordance with the savings clause provisions of the proposed rules."

of the consummation thereof; or

B. To compel the Plaintiff to agree to or to consummate a rule or contract provision with the Defendants inconsistent with the Cheney Award, and specifically from compelling the Plaintiff to agree with Defendants to the following Rule first proposed by the Defendants on November 28, 1953, or any similar contract provision;

"Amendment to Article 41, Coupling or uncoupling of Air and/or Steam hose, etc.

"Foremen and Switchmen employed in yards, and trainmen employed on switch local assignments and/or local freight assignments will be paid an arbitrary of $1.50 per

day or trip regardless of miles or hours involved in the day or trip".

"As a condition of this arbitrary allowance, said employee may be required to couple and/or uncouple air brakes, signal and steam hose, couple or uncouple vestibule curtains."

or,

C. To compel the Plaintiff to agree to or to consummate a contract provision with Defendants prescribing extra compensation to Defendant Class of employee for uncoupling air, steam or signal hose, which would in any way be inconsistent with the aforesaid Cheney Award.

[fol. 308] 11

It Is Further Ordered that the Central of Georgia Railway Company:

A. Have executed and filed with the Clerk of this Court a bond in the penal sum of $100,000.00 with sufficient and adequate Surety, to be approved by the Clerk or Deputy Clerk of this Court; said Bond to be conditioned to pay the Defendants or any of them, any loss, expense, and/or damage accruing to the Defendants or any of them as a result of this order, including all reasonable cost and expense of defense, including reasonable attorney's fees, should it be determined that this injunctive relief was granted improvidently or in error; and further conditioned upon the following: Should a Rule or contract provision be executed, within two years after this case is finally concluded, between the Central of Georgia Railway Company and the Defendants, with reference to the payment of an arbitrary for the coupling and uncoupling of air, steam, signal or steam hose, as was requested by Defendants on November 28, 1953, in their proposed rule change as follows:

"Amendment to Article 41, Coupling or uncoupling of Air and/or Steam Hose, etc.

"Foremen and Switchmen employed in yards, and trainmen employed on switch local assignments and/or local freight assignments will be paid an arbitrary of $1.50 per

day or trip regardless of miles or hours involved in the day or trip."

[fol. 309] "As a condition of this arbitrary allowance, said employee may be required to couple and/or uncouple air brakes, signal and steam hose; couple or uncouple vestibule curtains."

said rules shall be applicable or retroactive at least to the period from February 24, 1955, at 8:40 P. M. to the date of the expiration of thirty days from the date that this suit is finally concluded by order of this Court; and when payment shall have been made for the aforesaid loss, expense and/or damage, and for such prescribed period by the Plaintiff to the Defendants, or such of them as provided for in said rule, in such amounts as are called for in said rule, then this bond shall be void, otherwise of full force and effect.

B. That the Plaintiff maintain and preserve accurate and complete records of all such coupling and uncoupling functions performed on said railroad from February 24, 1955, which records shall be kept open for an inspection by a named representative of Defendants at reasonable times.

This order is not to be construed as effecting any action of the Defendants in any particular, except as actions may involve the controversy now before the National Railroad Adjustment Board; and is also not to be construed as inhibiting a voluntary settlement of this dispute.

Dated this 10th day of March 1955, at Brunswick, Georgia.

F. M. Scarlett, District Judge, U. S. District Court, Southern Dis-rict of Georgia.

[fol. 310] FINDINGS, CONCLUSIONS AND JUDGMENT—
Filed March 11, 1955

IN UNITED STATES DISTRICT COURT

BOND SUPPORTING PRELIMINARY INJUNCTION—
Approved March 11, 1955

Whereas, The Central of Georgia Railway Company, plaintiff in captioned cause, has moved the Court to issue a preliminary injunction, and the Court has rendered its find-

ings of facts, conclusion of law, and has granted the preliminary injunction; and

Whereas, said preliminary injunction requires the execution of a bond containing the following conditions to be approved by the Clerk, and to be filed in this Court; and

Whereas, The Central of Georgia Railway Company does desire to herewith comply with said bond requirement;

Now, Therefore, Central of Georgia Railway Company, Principal, and National Surety Corporation, as Surety, do hereby acknowledge themselves jointly and severally held and bound unto the Defendants in said cause, their heirs and successors and assigns, in the penal sum of One Hundred Thousand (100,000.00) Dollars, for the payment of any loss, expense, and/or damage accruing to the defendants or any one of them as a result of this order, including all reasonable costs and expense of defense, including reasonable Attorney's fees, should it be determined that this [fol. 311] injunctive relief was granted improvidently or in error; and further conditioned upon the following; should a rule or contract provision be executed within two years after this case is finally concluded, between the Central of Georgia Railway Company and the Defendants, with reference to the payment of an arbitrary for the coupling or uncoupling of air, signal or steam hose as was requested by defendants on November 28, 1953, in their proposed rule change as follows:

"Amendment to Article 41 Coupling or Uncoupling of Air and/or Steam Hose, etc.

"Foremen and Switchmen employed in yards, and trainmen employed on Switch local assignment and/or local freight assignments will be paid an arbitrary of $1.50 per day or trip regardless of miles or hours involved in the day or trip.

"As a condition of this arbitrary allowance, said employees may be required to couple and/or uncouple air brakes, signal and steam Hose; couple or uncouple vestibule curtains."

said rule shall be applicable or retroactive at least to the period from February 24, 1955, at 8:40 P. M. to the date of the expiration of thirty days from the date of this suit

is finally concluded by order of this Court; and when payment shall have been made for the aforesaid loss, expense, and/or damage, and for such described period by the plaintiff to the Defendants, or such of them as provided for in said rule, in such amounts as are called for in said rule, then this bond shall be void, otherwise of full force and effect.

[fol. 312] In Witness Whereof, the Principal and Surety have caused the execution and sealing of this instrument by their proper corporate officers or attorney-in-fact, this 10th day of March 1955.

Central of Georgia Railway Company, Principal. By H. L. Fulton, Jr., Vice-president,

Attest:

M. M. McLaughlin, Asst. Secretary. National Surety Corporation, By S. Hammon Story, Attorney-in-fact.

Attest:

Joan Follett.

Approved by me this 11th day of March 1955.

Margaret Clarke, Chief Deputy Clerk, United States District Court, Southern District of Georgia.

Bond Supporting Preliminary In-unction Filed March 11th, 1955.

[fol. 313] In United States District Court

Order re Filing of Answer—March 29, 1955

Upon good cause shown to the Court, and it appearing that the plaintiff has waived the time of filing,

And It Further Appearing that defendants filed their answer with the Clerk of this Court on March 21, 1955,

It Is Hereby Ordered that the time of the filing of the defendants' answer as above stated be, and the same is, hereby enlarged so as to constitute filing in proper time and in accordance with the rules of civil procedure.

So Ordered, this 29 day of March, 1955.

(s) F. M. Scarlett, Judge, United States District Court.

In United States District Court

Answer—Filed March 21, 1955

Civil Action 797

Now come the Brotherhood of Railroad Trainmen et al., defendants in the above entitled cause, subject to their motion to dismiss heretofore filed, and for their answer to the petition filed herein, say as follows:

First Defense

Defendants say that the issues raised are not justifiable and the Court is without jurisdiction of the subject matter of the complaint.

[fol. 3141

Second Defense

The petition fails to state a claim against defendants upon which relief can be granted.

Third Defense

Defendants say that the Court is without jurisdiction because the plaintiff has not exhausted its administrative remedies.

Fourth Defense

The Court is without jurisdiction because of the Norris LaGuardia Act, Title 29, Sections 101 and 115.

Fifth Defense

That the plaintiff is not entitled to injunctive relief because it failed to make every reasonable effort to settle the dispute by negotiation with the aid — any governmental machinery or mediation as required by Title 29, Section 108, U.S.C.A.

Sixth Defense

For their sixth defense, defendants admit, deny and allege as hereinafter set forth.

(1) Defendants admit paragraphs one and two of the petition.

(2) In answer to paragraph three, defendants admit

all the allegations therein, except the following which they expressly deny, " . . . and there is presented by this peti-
[fol. 315] tion a common question of law and fact effecting their several rights. . . . "

(3) Defendants admit paragraph four of the petition.

(4) Defendants deny paragraph five of the petition.

(5) In answer to paragraph six, defendants admit the allegations thereof, except the following, "or whether the matter was settled only for the duration of a certain collective bargaining agreement", which they expressly deny.

(6) Paragraph seven of the petition is admitted.

(7) In answer to paragraph eight, defendants admit there was a second amendment filed to the original petition as therein alleged, but deny that the second amendment is not essential to a proper statement of the complaint.

(8) Defendants admit paragraphs nine, ten and eleven of the petition.

(9) In answer to paragraph twelve of the petition, defendants admit that they filed a general demurrer to the said cause, and that the same was argued as alleged. Except as herein admitted, the allegations of paragraph twelve are denied.

(10) Paragraphs thirteen and fourteen of the petition are admitted.

(11) In answer to paragraph fifteen defendants admit that the argument of both of bill of exceptions and the
[fol. 316] cross-bill of exceptions was heard before the Supreme Court of Georgia. Except as herein admitted, the allegations of paragraph fifteen are denied.

(12) In answer to paragraph sixteen of the petition, defendants admit that the Supreme Court handed down a decision and admit that Exhibit "C" as attached to the petition is a correct copy of the opinion, but expressly deny that the Court held that the controversy submitted in the petition should have been referred to the National Railroad Adjustment Board.

(13) For lack of sufficient information at this time, defendants are unable to admit nor deny the allegations of paragraphs seventeen and eighteen.

(14) Paragraph nineteen of the petition is admitted.

(15) In answer to paragraph twenty (a) of the petition,

defendants admit that defendant Byington addressed a communication to the Executive Secretary and requested a thirty (30) day extension within which defendants would be required to answer; and that the said Board granted the request of the said Byington. Except as herein admitted, the allegations of paragraph twenty (a) are denied.

(16) Defendants admit the allegations of paragraph twenty (b), paragraph twenty-one and paragraph twenty-two of the petition.

(17) In answer to paragraph twenty-three defendants admit "that the strike was postponed pending mediation" and that no agreement was reached. Defendants deny that the mediator offered arbitration to the defendants and [fol. 317] consequently deny that they refused to submit the said matter to arbitration, and for lack of sufficient information neither admit nor deny that the plaintiff was agreeable to arbitrate.

(18) In answer to paragraph twenty-four, defendants admit that they were unwilling to leave the matter in status quo, but specifically deny the remaining allegations of said paragraph.

(19) In answer to paragraph twenty-five of the plaintiff's petition, defendants admit that they probably will go on strike unless the question of adopting a new rule is settled, but deny the conclusions as to the effect of said strike as alleged in paragraph twenty-five.

(20) Defendants deny the allegations of paragraph twenty-six of the plaintiff's petition and call for proof thereof.

(21) Paragraphs twenty-seven and twenty-eight of the petition are denied.

(22) Defendants deny the allegations of paragraphs twenty-nine and thirty of the petition.

(23) Defendants neither admit nor deny the allegations of paragraph thirty-one of the petition.

(24) In answer to paragraph thirty-two defendants say that the Court has no jurisdiction to comply with the request therein contained.

[fol. 318] (25) Except as expressly admitted in this answer, each and every allegation of the petition of the plaintiff's is denied.

Wherefore Defendants Pray:

That the petition herein be dismissed and that the defendants have and recover against the plaintiff and its bondsman for their loss, expenses and damages including all reasonable costs and expenses of defense together with reasonable attorney's fees, as more specifically set out in Title 29, Section 107 (e) U.S.C.A.

(s.) Myrick & Myrick, Attorneys for defendants.

P. O. Box 24, Savannah, Georgia.

Personally Appeared before the Undersigned, an Officer duly authorized to administer oaths, L. E. Chester, one of the defendants in the above entitled cause, who after being duly sworn, deposes and says that the matters and facts set forth in the foregoing answer are true.

(s.) L. E. Chester.

Sworn to and subscribed before me this 18th day of March, 1955.

(s.) Willis J. Richards, Jr., Notary Public, Chatham County, Georgia.

(Notarial seal.)

[fol. 319] On back of Defendant's answer:

Savannah, Ga., March 21, 1955.

I, Shelby Myrick, Jr., of Counsel for Defendants hereby certify that I have this day served a copy of the within answer upon John B. Miller, Attorney for the plaintiff by handing him a copy.

(s.) Shelby Myrick, Jr.

IN UNITED STATES DISTRICT COURT

NOTICE OF APPEAL TO COURT OF APPEALS UNDER RULE 73(B) AND TITLE 29, SEC. 110, U. S. C. A.—Filed March 30, 1955

To the Honorable Eugene Edwards, Acting Clerk of the District Court of the United States for the Southern District of Georgia, Savannah Division:

Notice is hereby given that the Brotherhood of Railroad Trainmen, Local Lodge No. 721, Brotherhood of Railroad Trainmen, Z. P. Logan, W. A. Nealey, L. E. Chester, B. G. Byington, W. B. English, J. W. Shirley, J. G. Purdue, and the Class of Employees of the Central of Georgia Railway Company represented by the foregoing named defendants [fol. 320] in the above entitled cause, hereby appeals to the United States Court of Appeals for the Fifth Circuit from the orders of the Honorable F. M. Scarlett, District Judge, United States District Court for the Southern District of Georgia in overruling the motion to dismiss of the defendants, by order dated February 28, 1955, and in granting temporary injunction to the plaintiff in the above styled cause, by order dated March 10, 1955.

Myrick & Myrick, Wayland K. Sullivan, Benning M. Grice, Attorneys for appellants, Brotherhood of Railroad Trainmen, Lodge 721 et al.

Notice of appeal. Filed March 30, 1955.

IN UNITED STATES DISTRICT COURT

APPEAL BOND—Filed March 30, 1955

GEORGIA,
Chatham County.

Know All Men By These Presents, That, we, the Brotherhood of Railroad Trainmen, Lodge No. 721, by its duly authorized officers and L. E. Chester as Principal and Mrs. I. Sasseen as Surety, are held and firmly bound unto the defendant in error, the Central of Georgia Railway Company in the full and just sum of Two Hundred Fifty (250.00) Dollars to be paid to the Central of Georgia Rail-

way Company, its attorneys, executors or assigns, to which payment well and truly to be made, we have bound ourselves, our heirs, executors and administrators jointly and severally by these presents.

[fol. 321] Sealed with our seals and dated this 30th day of March 1955.

Whereas, lately at the District Court of the United States for the Southern District of Georgia, Savannah Division in suit pending in said Court between the Central of Georgia Railway Company, Plaintiff and the Brotherhood of Railroad Trainmen et al., defendants two orders and judgments were rendered against the defendants, and the said defendants have served notice of an appeal and filed a copy thereof with the Clerk of said Court to reverse the orders and judgments of the Court in the aforesaid suit in the United States Court of Appeals for the Fifth Circuit.

Now, the condition of the above obligation is such that if the Brotherhood of Railroad Trainmen, et al. shall prosecute the writ of error to effect and answer all damages, pay all costs if the appeal is dismissed and the judgment affirmed, then the above obligation to be void, else to remain in full force and effect.

Brotherhood of Railroad Trainmen Lodge Number 721, Z. P. Logan, W. A. Nealey, L. E. Chester, B. G. Byington, W. B. English, J. W. Shirley, J. G. Pardue, By Shelby Myrick, Jr., One of the attorney of record duly authorized to execute this Bond.

[fol. 322] Mrs. I. Saseen, Surety, By W. J. Saseen, Attorney in Fact. (L. S.)

Appeal Bond, Filed March 30, 1955.

In United States District Court

(Title Omitted)

Designation of Record—Filed April 4, 1955

The appellants hereby designate the complete record and all the proceedings and evidence to be contained in the

record on appeal in the above entitled case, including all pleadings, motions, orders, transcript of evidence, objections to proposed findings of fact and conclusions of law and judgment, findings of fact, conclusions of law, and judgments, notices of appeal, orders extending time for filing and docketing records on appeal, and this designation of the record on appeal.

This April 2, 1955.

(s.) Wayland K. Sullivan, Myrick & Myrick, Benning M. Grice, Attorneys for Appellants, Brotherhood of Railroad Trainmen, et al.

Certificate of Service—(omitted in printing)

[fol. 323] In United States District Court

Order Extending Time for Filing and Docketing Record on Appeal—May 3, 1955

For good cause shown, It Is Ordered that the time for filing and docketing the record on appeal in the within case in the United States Court of Appeals for the Fifth Circuit is hereby extended to and including June 28, 1955.

This 3rd day of May, 1955.

F. M. Scarlett, U. S. District Judge

In United States District Court

[Title Omitted]

Objections to Proposed Findings of Fact, Conclusions of Law and Order—Filed May 16, 1955

The defendants respectfully object to the proposed Findings of Fact, Conclusions of Law, Order of the Court and [fol. 324] bond form submitted in the particulars and for the reasons hereinafter appearing:

I

Defendants object to the order granting a temporary injunction because sufficient facts have not been found and

supported by evidence to meet the requirements of the Norris-LaGuardia Act (29 USC 101 et seq). The record contains no evidence to show that unlawful acts have been threatened and will be committed unless restrained or will be continued. It contains no evidence whatever as to the inability or failure of public officials to furnish protection other than the conclusion of Witness Collins which is wholly unsupported by evidence of any damage done or threatened, and this we submit is not sufficient. The evidence shows that the plaintiff has failed to make every reasonable effort to settle the dispute either by negotiations or with the aid of available governmental machinery.

The evidence discloses that the Cheney Award was part of a Mediation Agreement. The May 25, 1951 Agreement was reached through the mediatory efforts of the National Mediation Board and not by collective bargaining as the proposed Findings of Fact in paragraph 9 state (to which defendants' specifically object).

The Mediation Agreement provides that the decision of Referee Cheney shall be final and binding. If any agency be called upon to construe "final and binding", that construction must be applied to the Mediation Agreement.

[fol. 325] Section 5, First (b) of the Railway Labor Act provides that mediation agreements must be construed by the National Mediation Board. It is true that the Mediation Board sent a mediator on the property to try to avoid the threatened interruption of service; but there is not the slightest shred of evidence that the Board or the mediator was asked to construe the words "final and binding" contained in the Mediation Agreement. Until this is done, the carrier has not exhausted the possibility of settlement before the Mediation Board. The carrier is not excused from this obligation by running to the National Railroad Adjustment Board. In fact, the carrier's lack of good faith is demonstrated by its selection of a tribunal whose decision it knows will long be deferred. Nor is the carrier excused by defendants' admission with respect to the National Railroad Adjustment Board, which admission was made in this Court for the purposes of our motion to dismiss (and in the Superior Court for the purposes of the special demurrer). The Mediation Agreement first entered

the record after the Court had denied our motion to dismiss, and was offered solely in opposition to the motion for temporary injunction.

Moreover, after the motions to dismiss had been disposed of, the Brotherhoods' demands for a change of rules and practices to which the Cheney Award related was admitted. Then for the first time, the controlling effect of Section 5, First (a) appeared. This subsection again invokes the jurisdiction of the Mediation Board. The Record shows that no proffer of arbitration was ever made by the mediator to the employees. The statute requires this to be done. Until it is done mediation is still progressing. It was not done; and as to this the record is [fol. 326] clear. Section 5, First (b) specifically and categorically states:

If such efforts to bring about an amicable settlement through mediation shall be unsuccessful, the said Board shall at once endeavor as its final required action (except as provided in paragraph third of this section and in section 10 of this Act) to induce the parties to submit their controversy to arbitration, in accordance with the provisions of this Act."

The duty thus created is an affirmative one. "The parties" intended means both parties. The record shows conclusively this was not done. We submit that Witness Collins' testimony as to the mediator's opinion of the futility of proposing arbitration to the men is not evidence of the performance of that duty. Nor does the Witness's remarks reflecting upon the methods and practices of mediators generally constitute any evidence of the performance of that duty or termination of mediation.

The carrier in fact has adamantly contended that the change in the rules and practices demanded were not negotiable. This we submit is not good faith collective bargaining under the decision of Clerks v. Atlantic Coast Line, 201 Federal, 2nd page 36. Here again it is demonstrated that an injunction should be denied for failure to perform its statutory duties with respect to collective bargaining.

II

Defendants strenuously object to the Court's assumption of jurisdiction. The right to demand the change in [fol. 327] rules and practices is not a justiciable issue. Under the clear decisions of the Supreme Court of the United States, the Court simply lacks jurisdiction, to say nothing about the abuse of discretion in issuing one because of this and the other points which have been raised.

III

Defendants object to the granting of a temporary injunction because the record shows clearly that administrative remedies have not been exhausted.

IV

Defendants strenuously object to the inclusion of roadmen in the decree. The Cheney Award specifically refers by its very terms to "yardmen" and "yardmen" only. The decree proposed flouts the instructions of the Court in this regard.

V

Defendants object to that portion of the proposed bond and order of the Court relating to retroactive pay for the men should it ultimately be determined that the rules and practices on this property to which the Cheney Award relates are terminable in accordance with the Railway Labor Act. The bond and order in this respect are simply not what the Court directed.

In lieu of the provisions contained in said proposed bond and order, said instruments should read as the Court directed, to-wit:

"Should the question as to the finality of the Cheney Award be determined adversely to the plaintiff by any [fol. 328] board or Court having jurisdiction, then the condition of said bond shall be that the carrier pay to all the employees involved retroactively to February 25, 1955, that rate to be determined by an agreement to be negotiated between the parties with respect to the subject matter of

the demand served upon the Central of Georgia on or about November 28, 1953, reading as follows:

'Amendment to Article 41 Coupling and uncoupling of Air and/or Steam Hose, etc.

'Foremen and Switchmen employed in yards, and trainmen employed on switch local assignments and/or local freight assignments will be paid an arbitrary of $1.50 per day or trip regardless of miles or hours involved in the day or trip.

'As a condition of this arbitrary allowance, said employees may be required to couple and/or uncouple air brake, signal and steam hose; couple or uncouple vestibule curtains;'

and when such payment shall have been made retroactively by the plaintiffs and the individual defendants in accordance with said rules and attorneys fees and other expenses paid in accordance with the Courts' order, then said bond shall be void, otherwise to remain in full force and effect."

Defendants further object to said bond and order in that no provision is made with respect to reasonable attorney fees.

[fol. 329] VI

Defendants strenuously object to the inclusion in the Finding of Facts any statement with respect to admission by Counsel for the defendants as to the jurisdiction of the National Railroad Adjustment Board unless it be qualified to conform to the fact that said admission was made solely with respect to the motion to dismiss and without any relevancy to the plaintiffs' motion for a temporary injunction. Obviously a motion to dismiss (as well as a demurrer) addresses itself to the facts pleaded by the opposing party.

VII

Defendants object to each of the following matters specifically, as included in the Finding of Facts:

(a) In the first paragraph on page 1 of the submitted proposal the words "pleadings of all parties" is incorrect,

as the plaintiff is the only party those pleadings were heard in this proceeding.

(b) In paragraph 3 of the Finding of Facts the Local Lodge of the Brotherhood is incorrectly described as a bargaining agent. As a matter of fact the General Committee of the Brotherhood of Railroad Trainmen on the Central of Georgia is the bargaining agency.

(c) In paragraph 8 of the Findings of Fact it is categorically stated that the matter referred to Referee Cheney involved the duty of trainmen (roadmen) to couple and uncouple hose. This we submit is not in accord with [fol. 330] the facts. Referee Cheney decided the matter submitted to him and his award shows clearly, unequivocally and without any doubt that only "yardmen" were ruled upon.

(d) Paragraph 9 of the proposed Findings of Facts contains the misleading statement that the May 25, 1951 Agreement was reached through collective bargaining. The carrier knows that the conferences which produced that agreement were "through" efforts of the National Mediation Board and the constant prodding of Dr. John Steelman in connection therewith. That agreement was arrived at "through mediation" as those words are used in Section 5, Second of the Railway Labor Act.

(e) Defendants object to paragraph 14 of the proposed Finding of Facts and that portion which states that the defendants "sought to discard the Cheney Award." The only clear interpretation of the Record is that the defendants sought to change the rules and practices which the plaintiff elected to retain as permitted under the Cheney Award.

(f) Defendants object to the gratuitous statement in paragraph 18 of the proposed Finding of Facts setting forth an alleged desire on the part of the carrier as an explanation of its reasons for rushing into the Superior Court. The statement is without evidentiary support. It is made in the face of the Congressionally recognized fact that restraining orders retard collective bargaining and never produce industrial peace.

[fol. 331] (g) Defendants object to the paragraph now number 23 on page 9 of the proposed Finding of Facts,

stating that the matter submitted to the National Railroad Adjustment Board is identical to the subject of the Cheney Award. In spite of the self-serving conclusion of Witness Collins to that effect, the statement simply is not true. Even a cursory reference shows that the Cheney Award applies to yardmen only, whereas the matter which the carrier elected to submit to the National Railroad Adjustment Board applies to roadmen. Furthermore the Cheney Award involved hose coupling only, whereas the item submitted to the Adjustment Board included curtains. Where, oh where, is the identity. The facts in the record must control over the conclusions of a willing witness.

(h) Defendants object to paragraph 31 of the proposed Finding of Facts wherein it states that the Railroad was threatened "with * * * possible wildcat strikes." We submit that there is not a single shred of evidence of any substance whatever to support this.

(i) Defendants object to paragraph 32 of the proposed Finding of Facts which says the carrier was threatened with an immediate system-wide strike. This is simply not true, as no strike date whatever has been set.

(j) Defendants strenuously object to the reference to violence in paragraph 34 of the proposed Finding of Facts. This is pure speculation. It is worse than the traditional "red herring."

(k) Defendants likewise object to paragraph 37 of the proposed Finding of Facts. This refers to "threatened [fol. 332] injuries" which are purely imaginary fictions in so far as the damages which the Norris-LaGuardia Act treats as justifying an injunction are concerned. There is absolutely no evidence of any substance to support this.

VIII

Defendants object to each of the following matters appearing under the heading "Conclusions of Law", to-wit:

(a) Defendants object to paragraph 2 of the Conclusions with respect to jurisdiction of the Court,—for the reasons already stated.

(b) Defendants object to paragraph 4 of the Conclusions, as the same is not true, as we have already shown.

(c) Defendants object to paragraph 5 of the Conclusions. The statement with respect to the jurisdiction of the National Railroad Adjustment Board is not true, as we have already shown. Moreover the agreement with respect thereto made by the defendants was made solely in connection with the motion to dismiss, but the paragraph does not so state.

(d) Defendants object to paragraph 6 of the Conclusions as being contrary to law.

(e) Defendants also object to paragraph 7 of the Conclusions as being contrary to the clear facts in the Record. [fol. 333] (f) Defendants object to the last paragraph of (at) the bottom of page 15, all of pages 16, 17, 18 and 19, all under the heading of "Conclusions" as the same are merely an argumentative recital appropriate only for a brief and do not constitute a proper Conclusion of Law in this case.

Respectfully submitted, Myrick & Myrick, By Shelby Myrick, Jr.

Objection to Findings, Conclusion & Judgment May 16, 1955.

[File endorsement omitted.]

[fol. 334] Clerk's Certificate to foregoing Transcript omitted in printing.

[fol. 335] Argument and Submission—December 6, 1955 (omitted in printing)

[fol. 336] IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 15671

BROTHERHOOD OF RAILROAD TRAINMEN, LOCAL LODGE NO. 721, ET AL., Appellants,

versus

CENTRAL OF GEORGIA RAILWAY COMPANY, Appellee

Appeal from the United States District Court for the Southern District of Georgia

OPINION—February 10, 1956

Before HUTCHESON, Chief Judge, and BORAH and BROWN, Circuit Judges

HUTCHESON, Chief Judge: Brought by their employer in the midst of a labor dispute, against the named defendants and the class of employees represented by them, the suit was for: (1) a temporary injunction restraining [fol. 337] them pendente lite, from endeavoring by self help to effect a modification or change of an arbitration award known as the Cheney Award and from calling and putting into effect a strike because of plaintiff's refusal to acquiesce in their demands; (2) a judgment declaring the award final and binding and not subject to modification and change; and (3) a final order making the injunction permanent.

The claim was: that, though in compliance with the decision of the Supreme Court of Georgia,[1] that it should do so, and pursuant to the Railway Labor Act, plaintiff had submitted the controversy between it and the defendants over the Cheney Award to the National Railroad Adjustment Board, the defendants had demanded that a modification of the award be negotiated and had given formal notice that a strike of the employees was being set subject

[1] Central of Georgia Ry. Co. v. Brotherhood of Railroad Trainmen, 85 SE(2) 413.

to a satisfactory settlement; that the strike date was once postponed at the intervention of the National Mediation Board, but the mediator had advised plaintiff that his services were fruitless; that the defendants will not agree to leave the matter in status quo pending a decision of the controversy by the National Adjustment Board, and have called a system wide strike against plaintiff to coerce it to adopt defendants' interpretation of the award; and that if the strike becomes effective it will completely close down plaintiff's operations with resulting irreparable injury.

[fol. 338] The defendants filed a motion to dismiss[2] for want of jurisdiction on the ground, among others, that the petition shows on its face that plaintiff is seeking an injunction in the face of, and contrary to, the Norris-LaGuardia Act, Secs. 101-115, Title 29.

This motion denied and a hearing had, the district judge concluding: that the Norris-LaGuardia Act was not intended by Congress to deprive a district court of jurisdiction to prevent irreparable injury by maintaining the status quo in respect to a controversy which is pending before the National Adjustment Board; and that it was necessary to preserve the status of the controversy now before the Board; granted the preliminary injunction as prayed,

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[2] "Now comes the Brotherhood of Railroad Trainmen, et al, defendants in the above entitled cause, and moves the court as follows:

"1. To dismiss the action because the petition fails to state a claim against the defendants upon which relief can be granted.

"2. To dismiss the action because the petition shows on its face that the Court is without jurisdiction of the subject matter.

"3. To dismiss the action on the grounds that the Court lacks jurisdiction because the petition shows that the plaintiff has not exhausted its administrative remedy.

"4. The petition shows upon its face that plaintiff is seeking an injunction under circumstances that are prohibited by the laws of the United States, to-wit, the Norris-LaGuardia Act, Title 29, Sections 101-115 and seeks no other relief."

enjoining defendants from striking, work stoppage, picketing, or any similar device.

Appealing from the order denying its motion to dismiss, for want of jurisdiction, and the order granting the injunction, appellants, presenting four questions[3] for [fol. 339] our decision, thus summarize their principal argument for reversal:

> "In both the overruling of the motion to dismiss the carrier's complaint and in issuing the temporary injunction against the Brotherhood defendants, the trial court violated the Norris-LaGuardia Act. These violations were numerous, repeated and substantial. Duty and candor compel us to say they were also flagrant. Any one of those violations controls and should alone decide the case. Therefore, we shall treat this feature first, before taking up the additional reasons for reversal."
>
> "The policy of the Act as set forth in Section 102 prevades all of its provisions. It was passed primarily to protect labor, not management. By doing so, it was hoped that all industry, labor and management, would be benefited ultimately and thus that the Act would be in the public interest."

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[3] These are:

"First. Were all of the requirements of the Norris-LaGuardia Act met so as to authorize an injunction under the facts here involved?

"Second. Did the railway carrier first exhaust its administrative remedies available under the Railway Labor Act so as to authorize an injunction under the facts here involved?

"Third. Is a demand for a change in rates of pay, rules or working conditions, pursuant to the Railway Labor Act, Sec. 6, a justiciable issue and basis for an injunction under the facts here involved?

"Fourth. Did the arbitration award in question conclude and thus prevent negotiation of the demand given by the Brotherhood to the Carrier pursuant to the Railway Labor Act, for compensation for coupling so as to authorize an injunction under the facts here involved?"

We agree with the appellants that this is so. In the Carter case, 131 F(2) 557 where the suit was for an injunction, the court upheld the injunction as to those acts which dealt with such violations as trespassing, injuring property, intimidating, or threatening customers, molesting, assaulting, or intimidating employees, but reversed the injunction in respect of all matters which could be construed [fol. 340] as prohibiting acts which the statute allows. Saying:

> "The language of the act is too plain and the decisions construing it too clear cut and positive to admit of any doubt that the purpose and effect of the act, as a whole, was to give expression to, and make effective, the policy which breathes throughout it. This policy is that labor disputes, as such, with the assembling, the picketing, the persuasion, the stopping of work, the enlisting of sympathy and support, and all the other acts expressly enumerated in Section 104, were no longer to be the subject of injunctive action but were, and were expressly recognized to be, legitimate means of advancing the interests of the working man, and, therefore, of the people as a whole. In the light of that policy, which can be made fully effective only when there is a recognition on the part of employer and employee alike, that labor disputes as such are not at all reprobated but encouraged, and only violence in connection with them is forbidden. . . ."

the court went on to hold that the use of injunctions in labor disputes, except for the limited purpose of preventing injury from violence where there was really no adequate remedy at law, was an abuse of legal process.
[fol. 341] In the face of the imperative language of the section,[4] appellee's contention, that the act is not applicable

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[4] "No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert,

because what was sought to be enjoined was action in breach of a contract embodied in the Cheney Award, is wholly untenable. The same contention has been rejected in case after case holding that the statute requires a contrary ruling.

Nor may appellee find better support for the injunction in its claim that the purpose of the strike and its effect would be to do violence to statutory procedures embodied in the statute for a disposition of controversies by the Railroad Adjustment Board. For, as has been held time and again, the purpose of the strike, whether it is or is not illegal, is not a limitation upon the prohibitions of the Statute. Cf. *Wilson & Co.* v. *Birl*, 105 F(2) 948, and *East Texas Motor Freight Lines* v. *Teamsters*, 163 F(2) 10, where this court held that such a contention was an attempt to enlarge Federal Court jurisdiction as limited by the act. Cf. also *Milk Wagon Drivers Union* v. *Lake Valley Farm Products*, 311 U.S. 91, and 43 C.J.S., 748 and 29 A.L.R.(2) 360.

[fol. 342] In this view it is not necessary for us to determine whether, as contended by appellees, the strike, if called, would be violative of the Railway Labor Act, upon the theory either that it would violate the contract providing for the Cheney Award, or that it would violate the spirit and purpose of the Labor Act to conduct a strike while the issue which brought it about was pending before the Adjustment Board with jurisdiction to decide it. This is so because the fundamental weakness of appellee's position is that there is no express provision in the Labor Act in any way limiting the scope and operation of the prohibitions of

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any of the following acts: (a) Ceasing or refusing to perform any work or to remain in any relation of employment: * * * (d) Aiding any persons involved in any labor dispute; (e) Giving publicity of any labor dispute; (f) Assembling to promote their interests; (g) Advising as to any of the acts heretofore specified; and (h) Agreeing with others to do or not to do any of the acts heretofore specified and (i) Causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in Sec. 103." 29 U.S.C. Sec. 104.

the LaGuardia Act, and the claim of implied repeal because of a necessary conflict between the two acts is not borne out by a consideration of the language of the two acts either apart from, or in connection with their legislative history.

It is true that the Railway Labor Act does contemplate that every reasonable effort will be made to maintain agreements and to avoid interruption to commerce, and that it contemplates that disputes be considered, and, if possible, decided expeditiously by negotiation and that if disputes over grievances are not adjusted on the property, they may be referred by both or either of the parties to the Adjustment Board. It is equally true, however, that none of the sections mandatorily provide that disputes must be submitted to the board rather than being handled by the voluntary methods provided for in the same act.

If, as appellee contends, Congress had, shortly after the passage of the Norris-LaGuardia Act, intended to curtail its provisions, limiting the equity jurisdiction of the courts [fol. 343] in labor disputes so as to subject strike action to injunction, it is inconceivable, we think, that it would not have expressly so provided. Indeed, in *General Committee of Adjustments* vs. *M.K. & T.*, 320 U.S. 323, the Supreme Court expressly held that the Mediation Board's determination of such a controversy was not justiciable. In the light of that decision, appellee is under a burden too heavy to be borne when it seeks to justify the judicial remedy sought and obtained here by invoking a jurisdiction which the Norris-LaGuardia Act expressly withdraws from the Federal Courts.

In short, all that is for decision on this appeal is whether the Railway Labor Act has expressly or impliedly repealed the provisions of the LaGuardia Act, denying jurisdiction to courts to enjoin strikes or work stoppages. Unless, therefore, it can be found that there has been such repeal, it is wholly necessary to determine whether, as appellee claims, the adjustment board has jurisdiction over the dispute or, as appellants claim, it does not have. Equally immaterial is the question whether the issue before the Adjustment Board is the same as that involved in the present case.

Further, appellee's contention, which prevailed with the

district judge below and which it presses here, that the suit falls within the language of the LaGuardia Act making an exception to the grant of an injunction in situations where unlawful acts have been threatened and will be committed unless restrained, is wholly untenable. It is plain from the language and the context that the words "unlawful acts" means violence, breaches of the peace, criminal acts, etc., and that such terms do not include, they do not constitute [fol. 344] a general reference to, anything that may be considered illegal but apply specifically to the acts of violence which authority is calculated to control. *Wilson & Co.* v. *Birl and Carter* v. *Herrin, supra,* Cf. 43 C.J.S., 702 and cases cited.

The complaint did not allege that any such violence was threatened or feared, indeed it was carefully framed with the purpose and intent, if possible, to plead a case not within but without the Norris-LaGuardia Act. The statement of the district judge in Finding 33, with reference to the degree of damage depending on the destruction and violence of the strike, and in Finding 34, with reference to the carrier's being threatened with unlawful acts by the defendants which would result in damage to its property, did not constitute findings that physical violence had been threatened and would be committed, and, if they were intended to be such, they are without any support either in the pleadings or in the evidence. Neither was there allegation or supporting proof that police officers were unable or unwilling to furnish adequate protection.

In view of these conclusions, it is unnecessary for us to consider the points made by appellants that the carrier's own conduct in failing (1) to sincerely negotiate, (2) to apply for mediation, and (3) after mediation had begun to proceed with it, and (4) to exhaust its remedies before the Adjustment Board before resorting to suit, was such as to preclude it, under Section 108 of the Act, from seeking an injunction.

[fol. 345] Finally, because of our expressed views that this case is one arising under the Norris-LaGuardia Act and the district court was without jurisdiction to proceed in it, we do not reach the last question dealt with in appellants'

brief, whether the fault in respect of the Cheney Award was the carrier's rather than the employees'.

Appellee concedes that the basic and principal question on this appeal is whether or not the Norris-LaGuardia Act prohibits the district court in this case from taking jurisdiction and granting the pendente lite relief prayed. Conceding, too, that this is a case of first impression in any United States Court of Appeals, it urges upon us that the nature of the relief asked differentiates this case from all others and takes it out of the provisions of the Norris-LaGuardia Act, limiting the jurisdiction of the district court and directing its exercise. In emphasis of this argument, the appellee insists that it did not seek to have the dispute in question settled by the district court, that it sought merely to maintain the status quo pending the decision of the question by the Adjustment Board.

Assuming that this is a correct statement of its pleadings, and treating its argument as directed to the fact that the injunctive action granted was limited, we think it plain that this makes no difference. The decisive, the fundamental questions here are, was this a labor dispute and did the suit seek to prevent by injunction what the act denies the court the power to prevent, and the answers to the questions must be in the affirmative.

[fol. 346] The judgment is, therefore, reversed, and the cause is remanded with directions to dismiss the suit for want of jurisdiction.

BROWN, Circuit Judge, dissenting:

The Railroad, by complaint,[1] sought and the court

[1] The majority opinion states that the suit was for "(2) a judgment declaring the award final and binding and not subject to modification and change, * * *." With deference I do not so construe the record. In paragraph 30 of the complaint, the injunction sought is carefully restricted to "pending a determination of this controversy by the National Railroad Adjustment Board" and in the Prayer, that an injunction be issued restraining Brotherhood from "endeavoring to negotiate or * * * demanding a rule * * * prescribing extra compensation * * * for coupling and uncoupling air, steam or signal hose; * * * from calling a strike,

granted an injunction[2] against the threatened, imminent strike by the Brotherhood pending the determination by the Railway Adjustment Board of the question submitted to it by the Railway of whether the Cheney Award decided "once and for all" the question of whose duty was the job of coupling and uncoupling steam and air hose, as claimed by the Railroad, or, as claimed by Brotherhood, was temporary

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work stoppage * * * directly or indirectly * * * because of * * * any feature of the controversy * * * described which has been referred to the National Railroad Adjustment Board * * * from endeavoring to negotiate a cancellation, change, modification or revision of the Award of Referee George Cheney * * * until the consideration of this controversy by the machinery of the National Railroad Adjustment Board has been exhausted in accordance with the provisions of the Railway Labor Act * * *." The Brotherhood's brief before us described the complaint and Prayer, (page 2) "It prayed for temporary restraining order, temporary injunction, and permanent injunction, enjoining a threatened strike because of attempts by the Brotherhood to re-negotiate for pay for coupling."

[2] The Decree carefully recites the purpose to be: "in order to preserve the status quo of the controversy now before the National Railroad Adjustment Board, * * *:

"Pending further order * * * and * * * a final hearing * * * the [Brotherhood] and others * * * are * * * enjoined * * * from theatening to or from calling a strike, work stoppage, or picketing * * * or from using any similar device * * * against the * * * Railway Company, and from striking, stoppage of work, picketing * * * in an effort to or designed or intended:

"A. To compel [Railroad] to agree with [Brotherhood] to a cancellation, modification, change or revision of the * * * Cheney [Award] * * *; or

"B. To compel the [Railroad] to agree to or to consummate a rule * * * inconsistent with the Cheney Award * * *; or

"C. To compel [Railroad] to agree to or to consummate a contract * * * prescribing extra compensation * * * for

[fol. 347] in nature and open for negotiation.[3] No declaratory relief or interpretation of the Cheney Award was sought or obtained.

[fol. 348] At the outset, I am in complete agreement that, if the Norris-LaGuardia Act, 29 U.S.C.A. 101-115, applies, the Railroad has not met its terms and the injunction, even though limited, ought not to have been granted. Similarly, I concur that the mere fact that the strike involved some

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uncoupling air, steam * * * hose * * * inconsistent with the * * * Cheney Award.

* * * *

"This order is not to be construed as effecting any action of the [Brotherhood] in any particular, except as actions may involve the controversy now before the National Railroad Adjustment Board; and is also not to be construed as inhibiting a voluntary settlement of this dispute."

[3] The Cheney Award, seeking to resolve the provocative controversy raging since 1887 with the advent of the Westinghouse Air Brake, grew out of the impasse in the 1950 Railway-Brotherhood negotiations with its threat of a nationwide strike of all Class I Railroads with the devastating consequences to the nation's economy and security. The Mediation Board, under the Railway Labor Act, attempted unsuccessfully to produce agreement or persuade the parties to arbitrate. Under the Act, the President of the United States appointed an Emergency Board whose findings the Brotherhood declined to accept, requesting instead that the President take control of the Railroads. In December 1950, after extended Presidentially sponsored conferences, agreement was reached on all but a limited number of issues, then specified, including coupling of steam-air hoses. On May 25, 1951, all issues except two were settled, one being coupling air hoses, and on that date the parties agreed to submit the issues to a Presidentially appointed Referee, (George Cheney was named) "the decision of the Referee shall be final and binding on the parties, and shall become effective * * *."

On November 28, 1953, the Brotherhood, under 49 U.S.C.A. 156 made demand for contract changes, including pay increases for air-steam coupling. Threatened with

violation of law or is in breach of contract does not remove the controversy from the sweeping prohibition of that Act. *Wilson & Co.* v. *Birl*, 3 Cir., 105 F.2d 948; *East Texas Motor Freight Lines* v. *Teamsters*, 5 Cir., 163 F.2d 10; *Carter* v. *Herrin Motor Freight Lines*, 5 Cir., 131 F.2d 557; *Milk Wagon Drivers Union* v. *Lake Valley Farm Products*, 311 U.S. 91, 85 L.Ed. 63.

But here injunction was sought and granted not because the contract forbade a strike, or to negotiate with the pressure of threatened strike was a violation of the contract, but rather because the contention and counter-contention of the effect and significance of the contract (Cheney Award) was itself a "dispute[s] between an employee or group of employees and a carrier * * * growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or [fol. 349] working conditions * * *", 45 U.S.C.A. 153 First (i), the determination of which is committed exclusively, where voluntary negotiations fail as they did here, to the

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strike over the issue and mediation failing, the Railroad filed in the Georgia State Court a suit for declaratory judgment under the Cheney Award declaring it final and binding and seeking injunction to effectuate it. The Railroad asserted below that Brotherhood contended, and the Supreme Court of Georgia agreed, that the State "Court is without jurisdiction * * * and * * * the matters involved are within the jurisdiction of the National Railroad Adjustment Board exclusively under Title 45, § 153(i) * * *." Central of Georgia Railway Co. v. Brotherhood of Railroad Trainmen, 85 S.E. 2d 413. Immediately, the Railroad submitted the controversy to the Railroad Adjustment Board. Then followed, in January and February 1955, the renewed demands for negotiation by the Brotherhood, the strike notices, efforts at mediation and submission to arbitration. The Railroad claimed, and the trial court found, that the Brotherhood was unwilling to allow the question of the extent, nature and effectiveness of the Cheney Award to be decided by the Railroad Adjustment Board and, a system-wide strike being imminent, an injunction was issued to permit it to be determined by the Adjustment Board.

National Railroad Adjustment Board. And if the controversy was one for the Railroad Adjustment Board, then the refusal of the Brotherhood, and its members, to allow the statutory course to be followed, and its interference in that process by a system-wide strike designed to force the issue on the very controversy before that tribunal, became, not a mere violation of a general law (unavailable as an escape from Norris-LaGuardia), but an absolute violation of the very law designed to regulate and control labor controversies of the kind involved.

Ignoring this latter point with an undue preoccupation with artificial concepts of partial repeal or implied repeal of Norris-LaGuardia is, I think, the defect of the majority opinion. The question is not: which repeals the other, and to what extent? It is rather the problem of frequent necessity in adjudication where two or more statutes, each bespeaking its own major policy, are accommodated and adapted to assure that the total policy reflected by all is effectuated.

This approach, substantiated by abundant authorities, has special merit here. Both statutes are the offspring of a common era, enacted (1932 and 1934) near the same time, with each intended as a major, deliberate and far-reaching change in national labor policy. Neither was intended as the repeal of the other. The enactment of one was not the repudiation of the policy of the other. They exist side by side and where, through the years, [fol. 350] they have come into apparent collision, the courts, unfettered by awkward concepts of repeal, have found the way by which now one, now the other, has been found dominant and controlling.

In this light, Federal Courts have never been shackled by Norris-LaGuardia in giving life and force to the mandates of the Railway Labor Act. *Virginian Railway Co.* v.

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[1] 300 U.S. 515, 81 L.Ed. 789; injunction issued to require Railroad to bargain with Union certified by Mediation Board and not to bargain with another; notwithstanding that this controversy met many of the Norris-LaGuardia definitions of a "labor dispute" and the decree issued was

System Federation;[4] *Graham* v. *Brotherhood of Locomotive Firemen and Enginemen*.[5]

[fol. 351] Of course, the Railway Labor Act is not a voluntary free-will mechanism; it is one imposing substantial obligations on the parties, railway management and labor alike; and a court, by injunction, can compel the parties

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of a type forbidden by Section 104, the Supreme Court rejected it as a bar: "It suffices to say that the Norris-LaGuardia Act can affect the present decree only so far as its provisions are found not to conflict with those of § 2, Ninth, of the Railway Labor Act, authorizing the relief which has been granted. Such provisions cannot be rendered nugatory by the earlier and more general provisions of the Norris-LaGuardia Act." Of course, Section 2, Ninth, 45 U.S.C.A. 152, Ninth, does not, as such, authorize injunctions.

[4] 338 U.S. 232, 240, 94 L.Ed. 22; injunction affirmed against a union forbidding unlawful discrimination toward non-members. "The respondent [Brotherhood] has strenuously urged throughout that in view of the provisions of the Norris-LaGuardia Act * * * the District Court was without jurisdiction to grant relief by injunction. * * * But this is not a question of first impression. In Virginian R. Co. v. System Federation, 300 U.S. 515, 81 L.Ed. 789, we held that the Norris-LaGuardia Act did not deprive federal courts of jurisdiction to compel compliance with positive mandates of the Railway Labor Act, 45 U.S.C.A. §§ 151 et seq. * * *, enacted for the benefit and protection, within a particular field, of the same groups whose rights are preserved by the Norris-LaGuardia Act * * *. We adhere to the views expressed in the Virginian case. But the Brotherhood urges that the controversy in the Virginian case did not involve a labor dispute within the meaning of the Norris-LaGuardia Act and that accordingly that case must be distinguished on its facts. * * * We do not accept the Brotherhood's invitation to narrow the meaning of that term. * * * Moreover, if this Court had considered that a labor dispute was not involved, it would hardly have taken the trouble, in the Virginian case, to refute contentions based upon parts of the Act, which as a whole

der of Railway Conductors v. *Pitney;*[6] *Elgin, Joliet & E. R. Co.* v. *Burley;*[7] *Brotherhood of R. Trainmen* v. to carry out and effectuate its aims, *Texas and New Orleans R. Co.* v. *Brotherhood*, 281 U.S. 548, 74 L.Ed. 1034; *Virginian Railroad Co.* v. *System Federation, supra*; *Or-*

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extends its protection solely to such disputes. * * * If, in spite of the Virginian, Steele, and Tunstall cases * * *, there remains any illusion that under the Norris-LaGuardia Act the federal courts are powerless to enforce these rights, we dispel it now. * * *."

This completely dissipates, I think, the force of the argument of the majority: "If, as appellee contends, Congress had, shortly after the passage of the Norris-LaGuardia Act, intended to curtail its provisions, limiting the equity jurisdiction of the courts in labor disputes so as to subject strike action to injunction, it is inconceivable, we think, that it would not have expressly so provided, * * *." Of course, its emphasis on the prohibition of *strikes*, as such, ignores, as Justice Jackson pointed out, the wide character of controversies protected and remedies forbidden.

[6] 326 U.S. 561, 90 L.Ed. 318; dispute over assignment of work on certain trains; one union contending that by virtue of a contract, not negotiated pursuant to Section 6, 45 U.S.C.A. 156, it was unlawfully given to another. Court recognizes that injunction can issue to compel compliance with the Act, including Section 6, but since question depends on the interpretation of the disputed contract, this was a matter for determination by the Adjustment Board. "Under these circumstances the Court should exercise equitable discretion to give that agency the first opportunity to pass on the issue. Certainly the extraordinary relief of an injunction should be withheld, at least, until then. * * * Only after the Adjustment Board acts, but not until then, will it plainly appear that such relief is necessary to secure compliance with the statute. * * *"

[7] 325 U.S. 711, 720, 721, 89 L.Ed. 1886, 1893; the court rejects the contention that an Adjustment Board award amounts to nothing more than an advisory opinion. "The contention, founded upon language of the opinion in Moore

[fol. 352] *Howard*,[7] including the resolution of disputes, grievances, and controversies through the administrative machinery of the Adjustment Board set up under the Act.[8] [fol. 353] The National Railway Labor Act is not for labor alone. To be sure it benefits labor greatly, but its underlying purpose is to assure industrial peace in an

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v. Illinois Central R. Co., 312 U. S. 630, 85 L.Ed. 1089, regards the Act's entire scheme for the settlement of grievances as wholly conciliatory in character, involving no element of legal effectiveness, with the consequence that the parties are entirely free to accept or ignore the Board's decision.

"At the outset we put aside this broadest contention as inconsistent with the Act's terms, purposes and legislative history. The *Moore* case involved no question concerning the validity or the legal effectiveness of an award when rendered. Nor did it purport to determine that the Act creates no legal obligations through an award or otherwise. * * * both prior and later decisions here are wholly inconsistent with such a view of its effects * * * 12 * * *." Footnote 12 then states: "Thus, one of the statute's primary commands, judicially enforceable, is found in the repeated declaration of a duty upon all parties to a dispute to negotiate for its settlement. * * * [citing cases] This duty is not merely perfunctory. Good faith exhaustion of the possibility of agreement is required to fulfill it. * * *; Brotherhood of R. Trainmen v. Toledo P. & W. R. Co., 321 U.S. 50, 88 L.Ed. 534, 538, * * *. At successive stages of the statutory procedure other duties are imposed. Cf. §§ 5 First (b), 6, 10."

[7] 343 U.S. 768, 96 L.Ed. 1283: "In fashioning its decree, the District Court is left free to consider what provisions are necessary to afford these employees full protection from future discriminatory practices of the Brotherhood. However, in drawing its decree, the District Court must bear in mind that the disputed questions of reclassification of the craft of "train porters" are committed by the Railway Labor Act to the National Mediation Board."

[8] Rolfes v. Dwellingham, 8 Cir., 198 F. 2d 591; injunction issued in case involving allocation of work between com-

important phase of our national economy. It is a double-track system; the trains run both ways simultaneously, and when equity can compel a Railroad to comply, *T. & N.O. R. Co.* v. *Brotherhood*, *Virginian R. Co.* v. *System Federation*, *supra*, so, too, may it compel obedience by unions, *Brotherhood of Trainmen* v. *Howard*, *Graham* v. *Brotherhood of Locomotive Firemen & Enginemen*, *supra*.

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peting classification of employees, to remain in force pending determination by the National Railway Adjustment Board of the question of jurisdiction involved or for a reasonable time for the waiters to invoke the jurisdiction of the Board. Equitable relief was granted "in aid of the administrative machinery provided for the adjustment of disputes in the Railway Labor Act," * * * and "limited its injunction strictly to the purpose of affording opportunity for the administrative Board to function as contemplated by the Act. * * * The Railway Labor Act contemplates that the Boards which it sets up shall function through process of mediation and interpretation of disputed contracts to minimize conflicts and interruptions of commerce. * * * When the action was found to be wrongful and violative of the provisions of the Act, it was the duty of the court, and it properly acted, to restore the plaintiffs to their position before the wrongful action was taken against them." Court expressly states that *Graham*, *Virginian*, *Steele*, and *Tunstall* are "equally conclusive that the Norris-LaGuardia Act does not deprive the federal courts of power to issue such an injunction * * * in aid of the administrative Board and to preserve the right of the waiters-in-charge to resort to the administrative procedure provided by * * * the * * * Act."

M.K.T. R. Co. v. Brotherhood of Railway Clerks, 7 Cir., 188 F.2d 302: institution of suits by the Brotherhood to enforce awards on allocation of work between competing classifications enjoined, as awards illegal for want of notice.

M.K.T. R. Co. v. National Railroad Adjustment Board, N.D.Ill., 128 Fed.Supp. 331: injunction issued against Brotherhood and Board to forbid efforts to enforce conflicting, contradictory awards made without adequate notice

[fol. 354] It seems equally plain that a genuine difference over the meaning and effect of a contract is a grievance which must be submitted to and decided by the Railway Adjustment Board, *Slocum* v. *Delaware L. & W. R. Co.*;[10] *Order of Railway Conductors of America* v. *Southern Rail-*

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pending a determination of all of the cases consolidated by further award of the Board.

Brotherhood of Railroad Trainmen v. Templeton, 8 Cir., 181 F.2d 527, cert. denied 95 L.Ed. 605, 643: injunction issued against Brotherhood to forbid enforcement of and practices under awards made without adequate notice on allocation of work between competing classifications.

Railway Employees Cooperative Association v. A. B. & C. Railroad Co., D.C.Ga., 22 Fed.Supp. 510: injunction issued against Railroad prohibiting interference with union selection of bargaining representative pending decision by Railway Labor Board machinery.

Cf. B. & N.O. R. Co. v. Chicago River & Indiana R. Co., 7 Cir., 170 F.2d 654, cert. denied 93 L.Ed. 1101; M.K.T. R. Co. v. Randolph, 8 Cir., 164 F.2d 4.

Union Premier Food Stores v. Retail Food C. & M. Union, 3 Cir., 98 F.2d 821, reversed as moot, 308 U.S. 536, 84 L.Ed. 445, presented substantially the same problem under the National Labor Relations Act; injunction was issued against a strike where, in a representation controversy, the employer was neutral and the matter was then awaiting decision by the National Labor Relations Board.

[10] 339 U.S. 239, 94 L.Ed. 795; referring to the Act's purpose to avoid interruption to Commerce, 45 U.S.C.A. 151a, Court stated: "* * * This purpose extends both to disputes concerning the making of collective agreements and to grievances arising under existing agreements. [cites *Elgin* case supra] The plan of the Act is to provide administrative methods for settling disputes before they reach acute stages that might be provocative of strikes. Carriers are therefore required to negotiate with bargaining representatives of the employees. [cites *Virginian*, supra] The Act also sets up machinery for conciliation, mediation, arbitration and adjustment of disputes to be invoked if ne-

way Co., 339 U.S. 255, 94 L.Ed. 811, once that procedure has been invoked by one of the parties.[11]

The legislative scheme for these matters to be first determined by the expertise of the Adjustment Board is completely frustrated if resort by either party to court or any other activity which prevents the free functioning of this machinery is permitted. Requiring the submission of these grievances to the Adjustment Board contemplates the exercise of deliberative judgment in the light of its special industrial experience.

[fol. 355] No matter how informal the proceedings might be, or how unlikely lawyers and judges the mechanism may function, the whole spirit is that the result is to be an informed judgment. That means that the adjustment machinery must be free to consider the controversy in the light of its inherent merits, free from extrinsic pressures. This deliberation, this exercise of judgment, cannot take place if either of the parties can marshal and deploy pressures and forces, economic or otherwise, which will interfere with or interrupt or, more likely make altogether unnecessary or futile the operation of this machine.

A strike, or the threat of a strike, is but one kind of interference with the orderly operation of this mandatory system. If, merely because the union might ultimately strike after a final award by Adjustment Board or decision

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gotiations fail. * * * It was to prevent such friction that the 1926 Act provided for creation of various Adjustment Boards by voluntary agreement between carriers and workers. * * * But this voluntary machinery proved unsatisfactory, and in 1934 Congress, with the support of both unions and railroads, passed an amendment which directly created a national Adjustment Board * * *. The Act thus represents a considered effort on the part of Congress to provide effective and desirable administrative remedies for adjustment of railroad-employee disputes growing out of the interpretation of existing agreements. * * *"

[11] Elgin, Joliet & E. R. Co. v. Burley, 325 U.S. 711, 727, 89 L.Ed. 1886, 1896, "Each party to the dispute may submit it for decision, whether or not the other is willing * * *."

of Mediation Board, a strike, or threat of strike, can be used initially to thwart consideration or determination it would make the whole procedure futile. Surely, in the establishment of this system, Congress expected that machinery constructed for the purpose of eliminating strikes should have adequate means to control or regulate the force or threat of such action until the statutory device should have had an opportunity to function.

This does not impinge upon the basic policies reflected in the Norris-LaGuardia Act or the elemental rights which seem to inhere in the right to strike. A court of equity is not being used, as was so often formerly the case, to upset the balance or imbalance of competing economic [fol. 356] forces in order to give one party, rather than the other, weight or advantage in a private controversy between labor and management. Here a court of equity exerts its power to fulfill the predominant public interest in having provocative (but as here otherwise relatively insignificant) controversies determined by the public agency established by law for that very purpose. In this way the equity court, not ranging on the side of one against the other, adheres strictly to the position of impartial enforcement of law—an imposition on each and both of the duty to use freely, and in good faith exhaust, this statutory machinery for the determination of these controversies.

A real, genuine, spirited disagreement exists as to the meaning, application and effect of the Cheney Award—whether, as claimed by Railroad, it solved the air coupling problem forever, or, as contended by Brotherhood, foreclosed it only during the life of the 1950 contract of which the Cheney arbitration was a part, and, whether, in either case, it would prohibit efforts by the Brotherhood to secure changes in contracts concerning the future. If the Railroad is right, the Brotherhood should be held to the bargain made inducing the Cheney arbitration and award; if the Railroad is wrong, the Brotherhood should be free to negotiate with all the pressures and forces it can marshal.

That controversy is for determination by the machinery of the National Railway Labor Act. The decree permits the machine to work. It was right, in my judgment.
[fol. 357] I therefore respectively dissent.

[fol. 358] IN UNITED STATES COURT OF APPEALS

No. 15671

BROTHERHOOD OF RAILROAD TRAINMEN, LOCAL LODGE No. 721, ET AL.,

versus

CENTRAL OF GEORGIA RAILWAY COMPANY

JUDGMENT—February 10, 1956

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Georgia, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, reversed; and that this cause be, and it is hereby, remanded to the said District Court with directions to dismiss the suit for want of jurisdiction;

It is further ordered and adjudged that the appellee, Central of Georgia Railway Company, be condemned to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

"BROWN, Circuit Judge, dissenting."

* * * * * *

[fols. 359-376] Petition for Rehearing and Opposition Thereto covering 20 pages filed omitted from this print. It was denied, and nothing more by order.

[fols. 377-381] [Title omitted]

ORDER DENYING REHEARING—April 2, 1956

It is ordered by the Court that the petition for rehearing filed in this cause be, and the same is hereby, denied.
"BROWN, Circuit Judge, dissenting."

* * * * * *

[fol. 382] Clerk's Certificate to foregoing Transcript omitted in printing.

[fol. 383] Supreme Court of the United States

Order Allowing Certiorari—Filed October 15, 1956

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

MAY 11 1956

IN THE

Supreme Court of the United States

OCTOBER TERM 1955

No. [redacted] 84

CENTRAL OF GEORGIA RAILWAY COMPANY,
Petitioner,

vs.

BROTHERHOOD OF RAILROAD TRAINMEN; LOCAL LODGE NO. 721, ET AL.
Respondents.

Petition of Central of Georgia Railway Company for Writ of Certiorari to United States Court of Appeals, Fifth Circuit

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May 10, 1956

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IN THE

Supreme Court of the United States

OCTOBER TERM 1955

No.....

CENTRAL OF GEORGIA RAILWAY COMPANY,
Petitioner,

vs.

BROTHERHOOD OF RAILROAD TRAINMEN; LOCAL LODGE NO. 721, ET AL.
Respondents.

Petition for Writ of Certiorari

TO THE HONORABLE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

COMES NOW, Central of Georgia Railway Company (hereinafter referred to sometimes as "Central" or "Petitioner") and presents this its petition for Writ of Certiorari to be directed to the United States Court of Appeals for the Fifth Circuit, Petitioner respectfully showing:

Opinions Delivered in the Courts Below

In the case of Central of Georgia Railway Company vs. Brotherhood of Railroad Trainmen, Local Lodge No. 721, et al, Civil Action No. 797, in the United States District Court for the Southern District

of Georgia, the Court handed down its findings of fact, conclusions of law and preliminary injunction on March 10, 1955. This opinion was not reported, but can be found in the printed transcript in this case beginning at page 281. In addition to the one certified copy, nine additional copies of the printed record in the Court below are being filed with this petition.

The Brotherhood of Railroad Trainmen, et al., appealed and in the case of Brotherhood of Railroad Trainmen; Local Lodge No. 721, et al., Appellants vs. Central of Georgia Railway Company, Appellee, Case No. 15671, the United States Court of Appeals for the Fifth Circuit rendered an opinion on February 10, 1956, Judge Brown dissenting, reversing the District Court. (Rehearing denied without opinion April 2, 1956). We have no knowledge that the opinion has up to now been reported, but it is set forth in full in Appendix "A" hereof.

Grounds for Invoking Jurisdiction of This Court

The judgment sought to be reversed in this petition for certiorari was dated and entered on February 10, 1956 and rehearing denied April 2, 1956.

By order dated April 11, 1956, mandate was stayed until May 11, 1956.

It is respectfully submitted that the jurisdiction to review the judgment of the Court of Appeals for the Fifth Circuit in this case is conferred on this Court by Title 28, U.S.C., Section 1254 (62 Stat. 928) and acknowledged by Rule 19 of the Supreme Court Rules. It is the contention of Central of Georgia as Petitioner that:

(1) The opinion sought to be reviewed is in direct conflict with the decision of the Court of Appeals for the Seventh Circuit decided on February 6, 1956 in the case of Chicago River and Indiana Railroad Company et al. vs. Brotherhood of R.R. Trainmen, et al. Case No. 11474 reported in 229 Fed(2) 926.

(2) The opinion sought to be reviewed decided an important Federal question which has not been but should be specifically settled by this court.

(3) The opinion sought to be reviewed is in conflict with analogous and therefore applicable decisions of this Court.

Questions Presented for Review

The question presented for review is whether or not the Norris-LaGuardia Act[1] deprives the United States District Court of jurisdiction to enjoin a strike threatened by the Brotherhood of Railroad Trainmen over a dispute, pending the settlement of that very dispute by the National Railroad Adjustment Board, to which board the dispute has been properly submitted for decision pursuant to the Railway Labor Act.[2]

There were several other ancillary questions before the Court of Appeals but they were not decided in view of that Court's opinion that the Norris-LaGuardia Act was controlling and denied jurisdiction to the District Court.

The question was raised in this manner:

The District Court, after hearing on motion for preliminary injunction, found that the Railroad

[1] 29 U.S.C.A. 101 et seq.
[2] 45 U.S.C.A. Sec. 151 et seq.

Brotherhood, a duly authorized bargaining representative under and subject to the Railway Labor Act, was threatening to call a strike on the Central of Georgia Railway Company, a common carrier by rail subject to the Railway Labor Act. That such threatened strike grew out of a dispute over which the National Railroad Adjustment Board had primary exclusive jurisdiction and that such dispute had been submitted to that Board and was then pending before that Board for decision. The District Court granted the preliminary injunction to preserve the status quo pending a decision of the very dispute by the National Railroad Adjustment Board then and now existing and pending further order of the Court. Appeal was taken therefrom by the Brotherhood of Railroad Trainmen. The Court of Appeals, by a split decision, reversed the District Court holding that the Norris-LaGuardia Act was controlling and that the District Court had violated the Norris-LaGuardia Act, there being "no express provision in the Labor Act in any way limiting the scope and operation of the prohibitions of the LaGuardia Act, and the claim of implied repeal because of a necessary conflict between the two acts is not borne out by a consideration of the language of the two Acts either apart from, or in connection with their legislative history." (Rehearing denied by a split decision).

Thus it is that the Court of Appeals passed on only one single point.

Federal Statutes Involved

This case involves the inter-relationship and inter-affects of the Norris-LaGuardia Act and the Railway Labor Act. The pertinent features of both acts are as follows:

(1) *Railway Labor Act*

Section 1a of the Railway Labor Act (Title 45 U.S.C.A., Section 151a) provides: "The general purposes of the chapter are: (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; *** (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules or working conditions."

Section 2 First of the Railway Labor Act (Title 45 U.S.C.A., Sec. 152 First) provides: "It shall be the duty of all carriers, their officers, agents and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof."

Section 2, Second, of the Railway Labor Act (Title 45 U.S.C.A., Sec. 152 Second) provides: "All disputes between a carrier or carriers, and its or their employees shall be considered, and, if possible, decided with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute."

Section 3, First, (i) of the Railway Labor Act (Title 45 U.S.C.A., Sec. 153 First (i)) provides: "The

disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions. ***, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes."

(2) *Norris-LaGuardia Act*

Section 1 "No Court of the United States, as defined in Sections 101-115 of this Title, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of such sections; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy in such sections." (Title 29, U.S.C.A. Section 101, Section 1, 47 Stat. 70)

Section 4 "No Court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

"(a) Ceasing or refusing to perform any work or

to remain in any relation of employment." (29 U.S.C. Sec. 104, Sec. 4, 47 Stat. 70).

Section 13 "When used in Sections 101-115 of this Title, and for the purposes of such sections—(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a 'labor dispute' (as defined in this section) of 'persons participating or interested' therein (as defined in this section)." (Title 29 U.S.C. Sec. 113, Sec. 13, 47 Stat. 73).

STATEMENT OF THE CASE.

The District Court has jurisdiction over this complaint because it arises under the laws of the United States and the matter in controversy exceeds the sum of Three Thousand ($3,000.00) Dollars, exclusive of interest and costs (Title 28 U.S.C. Sec. 1331); also because the complaint arises under an Act of Congress regulating commerce (Title 28 U.S.C. Sec. 1337). Said laws of the United States and said Act of Congress regulating commerce are found in the Railway Labor Act, Title 45 U.S.C. Sec. 151 et seq.

The Central of Georgia Railway Company, by complaint, sought and the Court granted an injunction against the threatened, imminent strike by the Brotherhood of Railroad Trainmen and their craft pending the determination by the National Railroad Adjustment Board of the question submitted to it by the Central of whether the Cheney Award decided "once and for all" the question of whose duty was the job of coupling and uncoupling steam, signal and air hose, as claimed by the Railroad, or, as claimed by the Brotherhood, was temporary in nature and open for negotiation. No declaratory relief or interpretation of the Cheney Award was sought or obtained. It is interesting to note that the Brotherhood in this same dispute had prevailed in the State Court on the proposition that the National Railroad Adjustment Board had exclusive jurisdiction over this dispute. The relief sought in the complaint basically was a preservation of the status quo pendente lite, that is, merely pending the decision of the National Railroad Adjustment Board. The relief sought was a protection by a court of equity of orderly administrative procedure under the Railway Labor Act. As the Court of Appeals decision was based solely on a jurisdictional point, both the nature and the merits of the "hose coupling dispute" are not in issue. Therefore, insofar as this application for Certiorari is concerned, it must be taken as granted that the dispute is properly before the National Railroad Adjustment Board and within that Board's exclusive original jurisdiction. The present dispute arose as follows:

On November 28, 1953 The Brotherhood of Railroad Trainmen served notice on the Central of Georgia

Railway for a change in contract terms providing an arbitrary of $1.50 per day or trip for foremen and switchmen employed in yards and trainmen employed on switch local assignments and/or local freight assignments upon condition that said employees "may be required to couple and/or uncouple air brakes, signal and steam hose; couple or uncouple vestibule curtains." The Central took the position that in a 1951 arbitration award known as the Cheney Award it had been decided between the parties that such duties were a part of the basic duties of the trainmen and therefore as the Cheney Award had been made a part of the collective bargaining contract, such request for a change was contrary to the terms of the existing contract. This dispute was unsuccessfully negotiated and mediated. It was taken into the State Courts and at the instance of the Brotherhood the State Courts held that the dispute was a matter for the original primary jurisdiction of the National Railroad Adjustment Board under the Railway Labor Act. Thereupon the Central submitted the identical controversy to the National Railroad Adjustment Board for a decision. After requesting and obtaining additional time within which to answer the submission to the National Railroad Adjustment Board, the Brotherhood called a strike for February 18, 1955. The dispute was again negotiated and mediated. Thereupon the Central filed the complaint in the United States District Court for the Southern District of Georgia, and, as described by Judge Brown's dissenting opinion:

> "***here injunction was sought and granted not because the contract forbade a strike, or to negotiate with the pressure of a threatened strike was a violation of the contract, but rather

because the contention and counter-contention of the effect and significance of the contract (Cheney Award) was itself a 'dispute(s) between an employee or group of employees and a carrier *** growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions***', 45 U.S.C.A. 153 First (i), the determination of which is committed exclusively, where voluntary negotiations fail as they did here, to the National Railroad Adjustment Board. And if the controversy was one for the Railroad Adjustment Board, then the refusal of the Brotherhood, and its members, to allow the statutory course to be followed, and its interference in that process by a system-wide strike designed to force the issue on the very controversy before that tribunal, became, not a mere violation of a general law (unavailable as an escape from Norris-LaGuardia), but an absolute violation of the very law designed to regulate and control labor controversies of the kind involved."

ARGUMENT.

The grounds of this petition for Writ of Certiorari are as follows:

(1) There exists conflicting decisions of the United States Court of Appeals for the Fifth and Seventh Circuits on the principal point at issue in this case.

(2) The opinion of the United States Court of Appeals for the Fifth Circuit in this case has decided an important question of Federal Law which has not been directly and expressly decided by the Supreme Court of the United States, and the question is of

such importance that it should be settled by the Supreme Court of the United States.

(3) The opinion of the United States Court of Appeals for the Fifth Circuit in this case has decided a federal question in a way in conflict with analogous and applicable decisions of the Supreme Court of the United States.

The above grounds will be argued in order.

Conflicting Decisions of the United States Court of Appeals for the Fifth and Seventh Circuits.

On February 6, 1956, the United States Court of Appeals for the Seventh Circuit handed down its decision in the Chicago River and Indiana Railroad Company, et al., Appellants v. Brotherhood of Railroad Trainmen, et al., Appellees, No. 11474. Reported in 229 Fed. (2) 926.

In the Chicago River Case the Railway sought an injunction to restrain the Brotherhood of Railroad Trainmen (the same labor organization which is an appellant herein) from calling a threatened strike over 21 grievances and claims which the railroad had submitted to, and which were pending before, the National Railroad Adjustment Board for decision. The District Court had dismissed the cause believing that the Norris-LaGuardia Act prohibited jurisdiction over the matter, following the line of reasoning followed by the Fifth Circuit in our case. The Trainmen in the Chicago River case argued that the Court did not have the power to grant an order restraining a strike "because no provision of the Railway Labor Act prohibits a strike over grievances." The Circuit Court, citing authorities, held:

> "We, therefore, hold that the District Court has jurisdiction to issue an injunction restraining the Trainmen from striking over grievances and claims, unless the Norris-LaGuardia Act prevents or limits the Court's power to do so."

In finding that the Norris-LaGuardia Act did not infringe upon the administrative procedures of the Railway Labor Act, the Court held:

> "The compulsion inherent in the Railway Labor Act requires prompt and effective use of judicial machinery and, there being no clear intention in that Act to the effect that the Norris-LaGuardia Act prohibits or limits the issuance of injunctions to implement the Railway Labor Act, we hold that the Norris-LaGuardia Act does not apply to the case at bar."

One could not find a clearer case where there are conflicting opinions of two of the Circuit Courts of Appeal on the identical question. Both the Chicago River case and the present case involve a situation where the Brotherhood of Railroad Trainmen refused to permit the dispute at issue to be settled through the orderly procedure of the Railway Labor Act by the Railroad Adjustment Board. Instead, in each case, the Brotherhood of Railroad Trainmen sought to enforce their views by strike at the time that the dispute at issue was pending for settlement before the National Railroad Adjustment Board. The Seventh Circuit held that a Federal Court had the jurisdiction to enforce the obvious mandates of the Railway Labor Act and to protect orderly procedure under that act, whereas, the Fifth Circuit found that the Norris-LaGuardia Act deprived Federal Courts of the jurisdiction of protecting orderly procedure under the Railway Labor Act. The dissenting opinion of Judge Brown in the

Fifth Circuit, with cogent reasoning, reaches the same conclusions as did the Seventh Circuit, to wit:

> "Ignoring this latter point with an undue preoccupation with artificial concepts of partial repeal or implied repeal of Norris-LaGuardia is, I think, the defect of the majority opinion. The question is not: which repeals the other, and to what extent? It is rather the problem of frequent necessity in adjudication where two or more statutes, each bespeaking its own major policy, are accommodated and adapted to assure that the total policy reflected by all is effectuated.
>
> "This approach, substantiated by abundant authorities, has special merit here.*** The enactment of the one was not the repudiation of the policy of the other. They exist side by side and where, through the years, they have come into apparent collision, the Courts, unfettered by awkward concepts of repeal, have found the way by which now one, now the other, has been found dominant and controlling.
>
> "In this light, Federal Courts have never been shackled by Norris-LaGuardia in giving life and force to the mandates of the Railway Labor Act. Virginian Railway Company vs. System Federation: Graham v. Brotherhood of Locomotive Firemen and Enginemen."

Therefore, there is a clear and definite conflict between the decision of the Seventh Circuit and the decision in our case and there is a harmony with the decision of the Seventh Circuit in the dissenting opinion in our case.

The Opinion of the United States Court of Appeals for the Fifth Circuit in This Case Has Decided an Important Question of Federal Law Which Has Not Been Directly and Expressly Decided by the Supreme Court of the United States and the Question is of Such Importance That It Should Be Settled by the Supreme Court of the United States.

It is abundantly clear, without extended argument, that the question at issue is of grave importance to the welfare of our entire nation. Stating the question differently it is, whether or not the railroad brotherhoods will be permitted at their whim or fancy to disregard the orderly procedure of the Railway Labor Act, refuse to settle disputes in the manner provided by the act, and resort to the economic pressures of strikes. Is a Federal Court powerless because of the Norris-LaGuardia Act, in such a case, to protect and preserve the orderly procedure under the Railway Labor Act? If a Federal Court is so powerless as decided by the majority opinion in the Fifth Circuit, then the effectiveness of a major provision of the Railway Labor Act is completely nullified and destroyed.

Daily, literally hundreds of disputes are settled through the orderly machinery of the Railway Labor Act, involving the question of interpretation or application of provisions of existing labor agreements. If the parties cannot agree by negotiation between themselves, the dispute is submitted to the highest executive officer of the carrier involved for decision. If his decision is unsatisfactory to the Brotherhood, the Brotherhood can submit the dispute to the National Railroad Adjustment Board for decision. Likewise, if the railroad would like to have the matter decided

it may submit the dispute to the National Railroad Adjustment Board. This procedure has been held to be mandatory and neither party can resort to "self help" pending a decision by the Adjustment Board.

If the decision of the Fifth Circuit in our case is permitted to stand, the policy of the National Railway Labor Act will be defeated. The Fifth Circuit opinion in our case completely undermines the foundations of the settlement procedure provided by the Railway Labor Act.

As was stated by Judge Brown in his dissenting opinion:

> "The legislative scheme for these matters to be first determined by the expertise of the Adjustment Board is completely frustrated if resort by either party to court or any other activity which prevents the free functioning of this machinery is permitted. Requiring the submission of these grievances to the Adjustment Board contemplates the exercise of deliberative judgment in the light of its special industrial experience.
>
> "No matter how informal the proceedings might be, or how unlike lawyers and judges the mechanism may function, the whole spirit is that the result is to be an informed judgment. That means that the adjustment machinery must be free to consider the controversy in the light of its inherent merits, free from extrinsic pressures. This deliberation, this exercise of judgment, cannot take place if either of the parties can marshal and deploy pressures in forces, economic or otherwise, which will interfere with or interrupt or, more likely make altogether unnecessary or futile the operation of this machine.

"A strike, or the threat of a strike, is but one kind of interference with the orderly operation of this mandatory system. If, merely because the Union might ultimately strike after a final award by Adjustment Board or decision of Mediation Board, a strike, or threat of strike, can be used initially to thwart consideration or determination it would make the old procedure futile. Surely, in the establishment of this system, Congress expected that machinery constructed for the purpose of eliminating strikes should have adequate means to control or regulate the force or threat of such action until the statutory device should have had an opportunity to function.

"This does not impinge upon the basic policies reflected in the Norris-LaGuardia Act, or the elemental rights which seem to inhere in the right to strike. A Court of Equity is not being used, as was so often formerly the case, to upset the balance or imbalance of competing economic forces in order to give one party, rather than the other, weight or advantage in a private controversy between labor and management. Here a court of equity exerts its power to fulfill the predominant public interest in having provocative (but as here otherwise relatively insignificant) controveries determined by the public agency established by law for that very purpose. In this way the equity court, not ranging on the side of one against the other, adheres strictly to the position of impartial enforcement of law—an imposition on each and both of the duty to use freely, and in a good faith exhaust,

this satutory machinery for the determination of these controversies."

The Opinion of the United States Court of Appeals for the Fifth Circuit in This Case Has Decided a Federal Question in Conflict with Analogous and Thus Applicable Decisions of the Supreme Court of the United States.

The majority opinion of the Fifth Circuit concluded that the Norris-LaGuardia Act must be construed as depriving a Federal District Court of its jurisdiction to grant equitable relief to protect the orderly settlement of a dispute by the National Railroad Adjustment Board under the Railway Labor Act. The majority concluded that the resort to the National Railroad Adjustment Board for the settlement of disputes within its jurisdiction under the Railway Labor Act was not mandatory but purely permissive, stating "none of the sections mandatorily provide that disputes must be submitted to the Board rather than being handled by the voluntary methods provided for in the same Act." The majority opinion felt bound to apply the Norris-LaGuardia Act further because "there is no express provision in the Labor Act in any way limiting the scope and operation of the prohibitions of the LaGuardia Act, and the claim of implied repeal because of a necessary conflict between the two acts is not borne out by a consideration of the language of the two acts either apart from, or in connection with their legislative history."

The very clear dissenting opinion of Judge Brown in the Fifth Circuit ably shows how the foregoing conclusions are in conflict with opinions of the Supreme

Court of the United States, Judge Brown stating (R. 350):

> "*** Federal Courts have never been shackled by Norris-LaGuardia Act in giving life and force to the mandates of the Railway Labor Act. Virginian Railway Company v. System Federation; Graham v. Brotherhood of Locomotive Firemen and Enginemen, supra.
>
> "Of course, the Railway Labor Act is not a voluntary, free-will mechanism; it is one imposing substantial obligations on the parties, railway management and labor alike; and a court by injunction, can compel the parties to carry out and effectuate its aims. Texas and New Orleans Railroad Company v. Brotherhood, 281 U.S. 548, Virginian Railroad Company v. System Federation, supra; Order of Railway Conductors v. Pitney; Elgin, Joliet and Erie Railway Company v. Burley; Brotherhood of Railroad Trainmen v. Howard."

At this point we discuss the Supreme Court's decisions referred to above in the quotation from Judge Brown's dissent:

Virginian Railway Company v. System Federation, 300 U.S. 515, 81 Law Ed. 789, 57 Sup. Ct. 592 (1937). In this case an injunction issued at the instance of the railroad union to require the railroad to recognize it and to bargain with the union as certified by the Mediation Board and not to bargain with any other union. It is clear that this dispute met many of the Norris-LaGuardia definitions of a "labor dispute" and the decree issued was of a type forbidden by Section 104. The Supreme Court rejected the Norris-LaGuardia Act as a bar, stating:

"The power of Congress over interstate commerce extends to such regulations of the relations of rail carriers to their employees as are reasonably calculated to prevent the interruption of interstate commerce by strikes and their attendant disorders."

* * * * *

"It suffices to say that the Norris-LaGuardia Act can affect the present decree only so far as its provisions are found not to conflict with those of Section 2, 9th, of the Railway Labor Act, authorizing the relief which has been granted. Such provisions cannot be rendered nugatory by the earlier and more general provisions of the Norris-LaGuardia Act."

Thus it is clear that in the Virginian case the United States Supreme Court did not agree with the majority opinion in the instant case that there must be expressed language in the Railway Labor Act overriding the Norris-LaGuardia Act.

Graham v. Brotherhood of Locomotive Firemen and Enginemen, 338 U.S. 232, 94 L.Ed. 22, 70 Sup. Ct. 14 (1949). This was an action by negro firemen. An injunction issued and was affirmed against a union forbidding unlawful discrimination toward non-members. The court stated:

"The respondent (Brotherhood) has strenuously urged throughout that in view of the provisions of the Norris-LaGuardia Act *** the District Court was without jurisdiction to grant relief by injunction. *** But this is not a question of first impression. In Virginian Rail. R. Co. v. System Federation, 300 U.S. 515, we held that the Norris-LaGuardia Act did not deprive Federal Courts of jurisdiction to compel

> compliance with positive mandates of the Railway Labor Act, 45 U.S.C.A. Sec. 151 et seq., enacted for the benefit and protection, within a particular field, of the same groups whose rights are preserved by the Norris-LaGuardia Act. ***. We adhere to the views expressed in the Virginian case. But the Brotherhood urges that the controversy in the Virginian case did not involve a labor dispute within the meaning of the Norris-LaGuardia Act and that accordingly that case must be distinguished on its facts.*** We do not accept the Brotherhood's invitation to narrow the meaning of that term. *** Moreover, if this court had considered that a labor dispute was not involved, it would hardly have taken the trouble, in the Virginian case, to refute contentions based upon parts of the act, which, as a whole extends its protection solely to such disputes. *** If, in spite of the Virginian, Steele, and Tunstall cases ***, there remains any illusion that under the Norris-LaGuardia Act the Federal Courts are powerless to enforce these rights, we dispel it now.***."

As Judge Brown said, the foregoing quotation from the Graham case completely refutes the argument of the majority that had Congress intended for the Railway Labor Act to modify the Norris-LaGuardia Act, Congress would have expressly so provided. As Judge Brown also stated, "Of course, its (the majority opinion) emphasis on the prohibition of *strikes*, as such, ignores, as Justice Jackson pointed out, the wide character of controversies protected and remedies forbidden."

In *Texas and New Orleans Railroad Company v. Brotherhood of Railway and Steamship Clerks*, 281 U.S. 548, 74 L. Ed. 1034, this Court affirmed a decree

enjoining a railroad company from interfering with, influencing or co-ercing clerical employees of the company in the matter of their organization and designation of representatives for the purposes set forth in the Railway Labor Act. The Court stated (P-567):

> "It is thus apparent that Congress, in the legislation of 1926, while elaborating a plan for amicable adjustments and voluntary arbitration of disputes between common carriers and their employees, thought it necessary to impose, and did impose, certain definite obligations enforceible by judicial proceedings. *** While an affirmative declaration of duty contained in a legislative enactment may be of imperfect obligation because not enforcible in terms, a definite statutory prohibition of conduct which would thwart the declared purpose of the legislation cannot be disregarded. The intent of Congress is clear with respect to the sort of conduct that is prohibited.***"

Brotherhood of Railroad Trainmen v. Howard, 343 U.S. 768, 96 L.Ed. 1283, 72 Sup. Ct. 1022 (1952). This was a negro discrimination case, the Court saying (P. 775):

> "In fashioning its decree, the District Court is left free to consider what provisions are necessary to afford these employees full protection from future discriminatory practices of the Brotherhood. However, in drawing its decree, the District Court must bear in mind that *disputed* questions of reclassification of the craft of 'train porters' are committed by the Railway Labor Act to the National Mediation Board." The Court went on to say: "Our conclusion is that the District Court has jurisdiction and power to issue necessary injunctive orders (to enforce the Railway Labor Act) notwithstanding the provisions of the Norris-LaGuardia Act."

The foregoing cases make it clear that the Courts will enforce the obligations set forth in the Railway Labor Act, notwithstanding the Norris-LaGuardia Act. Equally clear it is from the following cases that the Supreme Court of the United States has held that where one party has submitted a controversy to the National Railroad Adjustment Board, it is the obligation of the other party to await the outcome of that decision:

Order of Railway Conductors v. Pitney, 326 U.S. 561, 90 L.Ed. 318, 66 Sup. Ct. 322 (1946). This case and Slocum both held that the word "may" is mandatory and that submission of dispute to the National Railroad Adjustment Board is mandatory if either party is dissatisfied with the settlement. This involved a dispute over the assignment of work on certain trains. The employees brought suit to enjoin the railroad trustee from displacing the plaintiffs. One union contended that by virtue of a contract, not negotiated pursuant to Section 6, 45 U.S.C.A. 156, the work was unlawfully given to another union. The Court recognized that injunction could issue to compel compliance with the Act, including section 6, but since the question depends on the interpretation of the disputed contract, this was a matter for determination by the National Railroad Adjustment Board. This Court stated (P. 567):

> "Under these circumstances the Court should exercise equitable discretion to give that agency the first opportunity to pass on the issue. Certainly the extraordinary relief of an injunction should be withheld, at least, until then ***. Only after the Adjustment Board acts, but not until then, can it plainly appear that such relief is

necessary to insure compliance with the statute."

At another point the Court said:

> "But the Court should not have interpreted the contracts for purposes of finally adjudicating the dispute between the unions and the railroad. The dismissal of the cause should, therefore, be stayed by the District Court, so as to give an opportunity for application to the Adjustment Board for an interpretation of the agreements."

In the Pitney case the Court recognized the necessity for the status quo pending a decision of the controversy by the National Railroad Adjustment Board.

Elgin, Joliet and Erie Railway Company v. Burley, 325 U.S. 711, 89 L.Ed. 1886, 65 Sup. Ct. 1282 (1945). Employees raised the issue of whether the union held authority under the Railway Labor Act to carry their claims to the Adjustment Board. The court, in rejecting the contention that an Adjustment Board award amounts to nothing more than advisory opinion, had this to say, speaking through Justice Rutledge (P. 720):

> "The contention, founded upon the language of the opinion in Moore v. Illinois Central Railway Company, 312 U.S. 630, 85 L.Ed. 1089, regards the Act's entire scheme for the settlement of grievances as wholly conciliatory in character, involving no element of legal effectiveness, with the consequence that the parties are entirely free to accept or ignore the Board's decision.
>
> "At the outset we put aside this broadest contention as inconsistent with the Act's terms, purposes and legislative history. The Moore case involved no question concerning the validity

or the legal effectiveness of an award when rendered. Nor did it purport to determine that the Act creates no legal obligations through an award or otherwise. *** both prior and later decisions here are wholly inconsistent with such a view of its effects ***12***."

Footnote 12 then states:

"Thus, one of the statute's primary commands, judicially enforceable, is found in the repeated declaration of a duty upon all parties to a dispute to negotiate for its settlement.*** (citing cases) This duty is not merely perfunctory. Good faith exhaustion of the possibility of agreement is required to fulfill it. ***; Trainmen v. Toledo P.&W. R. Co., 321 U.S. 50, 88 L.Ed. 534, 538.***. At successive stages of the statutory procedure other duties are imposed. Cf. Secs. 5 First (b), 6, 10."

* * * * *

"Several organizations took strike ballots and thus threatened to interrupt traffic, a factor which among others induced the Coordinator of Transportation to become the principal author and advocate of the amendments. (1934 Railway Labor Act). The sponsor in the House insisted that Congress act upon them before adjournment for fear if no action were taken a railroad crisis might take place. The old Mediation Board was helpless. To break this log jam, and at the same time to get grievances out of the way of the settling of major disputes through the functioning of the Mediation Board the Adjustment Board was created and given power to decide them. *** The Act purports to make the Board's decisions 'final and binding.' Section 3 First (m). *** The aim (of the Act) was not to dispense with agreement. It was to add decision where agreement fails and thus to safeguard the public as well as private

interests against the harmful effects of the pre-existing scheme."

Justice Rutledge in discussing the "major and minor" disputes, said as to major disputes, the statutory scheme retains throughout a voluntary mode of settlement; and that "no authority is empowered to decide the dispute." However, the course for settling grievances is entirely different beyond their initial stages! "Thereafter the act does not leave the parties wholly free, at their own will to agree or not to agree. On the contrary, one of the main purposes of the 1934 amendments was to provide a more effective process of settlement."

In the dissenting opinion in the Burley case it was said (P. 154):

> "The purpose of this legislation is the exertion of maximum pressure toward amicable settlement between the parties. Resort to the Adjustment Board is the last step in the statutory process."

Another case also cited by Judge Brown, is *Slocum v. Delaware Lackawanna and Western Railroad Company*, 339 U.S. 239, 94 L.Ed. 795, 70 Sup. Ct. 577 (1950). There the Court held that the National Railroad Adjustment Board disputes procedure under the Railway Labor Act was mandatory before either party could resort to self help. This case involved a dispute between two unions over the scope of their respective agreements with the railroad. The Court referred to the Acts purpose to avoid interruptions to commerce. 45 U.S.C.A. 151a, stating (P. 242):

> "This purpose extends both to disputes concerning the making of collective agreements and

to grievances arising under existing agreements. (Cites the Elgin case, supra). The plan of the Act is to provide administrative methods for settling disputes before they reach acute stages that might be provocative of strikes. Carriers are therefore required to negotiate with bargaining representatives of the employees. (Cites Virginian case, supra). The Act also sets up machinery for conciliation, mediation, arbitration and adjustment of disputes to be invoked if negotiations fail.*** It was to prevent such friction that the 1926 Act provided for creation of various adjustment boards by voluntary agreement between the carriers and workers.*** But this voluntary machinery proved unsatisfactory, and in 1934 Congress, with the support of both unions and railroads passed an amendment which directly created a National Adjustment Board. *** The Act thus represents a considered effort on the part of Congress to provide effective and desirable administrative remedies for adjustment of railroad-employee disputes growing out of the interpretation of existing agreements***".

Another case in point cited by Judge Brown is *Order of Railroad Conductors of America v. Southern Railway Company*, 339 U.S. 255, 94 L.Ed. 811. This was a dispute between certain conductors and the railroad concerning the railroad's obligations under a collective bargaining agreement to give conductors extra pay for certain services. Railroad refused to pay and thereafter sought a declaratory judgment in the State Court of South Carolina. This Court said at page 256 of its opinion:

"Sustaining the state court's action (that was a decision on the merits of the case) would invite races of diligence whenever a carrier or

> union preferred one forum to the other. And if a carrier or a union could choose a court instead of the Board, the other party would be deprived of the privilege conferred by Section 3 First (i) of the Railway Labor Act***, 45 U.S.C.A. Sec. 153 First (i), which provides that after negotiations have failed 'either party' may refer the dispute to the appropriate division of the Adjustment Board."

The analogous argument is that if either party could resort to self help, this would for practical purposes deprive the other of the privilege conferred by the Railway Labor Act.

The majority opinion in seeking an express provision of the Railway Labor Act which withdrew the application of the Norris-LaGuardia Act is also diametrically in conflict with the principle of statutory construction, enunciated by this Court in *Cook County National Bank v. United States*, 107 U.S. 445, 27 Law Ed. 537, 2 Sup. Ct. 561, in which it was stated:

> "A law embracing an entire subject, dealing with it in all of its phases, may thus withdraw the subject from the operation of a general law as effectually as though, as to such subject, the general law were in terms repealed. The question is one respecting the intention of the legislature."

WHEREFORE, Petitioner prays that a writ of certiorari be granted in this instance and that, after further and appropriate proceedings have been had, the judgment of the Court of Appeals be reversed and set aside. The lower Court's decision of February 10, 1956, rendered in the case at bar is directly in conflict with that of the 7th Circuit Court of February 6, 1956 in Brotherhood of Railroad Trainmen

et al v. Chicago River and Indiana RR Co., supra. Also, in its opinion sought to be reviewed, the Fifth Circuit Court has decided a Federal question in conflict with analogous and thus applicable decisions of the Supreme Court of the United States. In addition, the opinion herein complained of decided an important Federal question which is also of extreme importance to the railroad industry of our country and therefore, we believe this Court should unhesitatingly grant the writ prayed for.

This May 10, 1956.

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Appendix "A"

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 15671

BROTHERHOOD OF RAILROAD TRAINMEN, LOCAL LODGE NO. 721, ET AL.,
Appellants,

versus

CENTRAL OF GEORGIA RAILWAY COMPANY
Appellee.

Appeal from the United States District Court for the Southern District of Georgia.

(February 10, 1956.)

Before HUTCHESON, Chief Judge, and BORAH and BROWN, Circuit Judges.

HUTCHESON, Chief Judge: Brought by their employer in the midst of a labor dispute, against the named defendants and the class of employees represented by them, the suit was for: (1) a temporary injunction restraining them pendente lite, from endeavoring by self help to effect a modification or change of an arbitration award known as the Cheney Award and from calling and putting into effect a strike because

of plaintiff's refusal to acquiesce in their demands; (2) a judgment declaring the award final and binding and not subject to modification and change; and (3) a final order making the injunction permanent.

The claim was: that, though in compliance with the decision of the Supreme Court of Georgia,[1] that it should do so, and pursuant to the Railway Labor Act, plaintiff had submitted the controversy between it and the defendants over the Cheney Award to the National Railroad Adjustment Board, the defendants had demanded that a modification of the award be negotiated and had given formal notice that a strike of the employees was being set subject to a satisfactory settlement; that the strike date was once postponed at the intervention of the National Mediation Board, but the mediator had advised plaintiff that his services were fruitless; that the defendants will not agree to leave the matter in status quo pending a decision of the controversy by the National Adjustment Board, and have called a system wide strike against plaintiff to coerce it to adopt defendants' interpretation of the award; and that if the strike becomes effective it will completely close down plaintiff's operations with resulting irreparable injury.

The defendants filed a motion to dismiss[2] for want of jurisdiction on the ground, among others, that the

[1] Central of Georgia Ry. Co. v. Brotherhood of Railroad Trainmen, 85 SE(2) 413.

[2] "Now comes the Brotherhood of Railroad Trainmen, et al, defendants in the above entitled cause, and moves the court as follows:

"1. To dismiss the action because the petition fails to state a claim against the defendants upon which relief can be granted.

"2. To dismiss the action because the petition shows on its

petition shows on its face that plaintiff is seeking an injunction in the face of, and contrary to, the Norris LaGuardia Act, Secs. 101-115, Title 29.

This motion denied and a hearing had, the district judge concluding: that the Norris LaGuardia Act was not intended by Congress to deprive a district court of jurisdiction to prevent irreparable injury by maintaining the status quo in respect to a controversy which is pending before the National Adjustment Board; and that it was necessary to preserve the status of the controversy now before the Board; granted the preliminary injunction as prayed, enjoining defendants from striking, work stoppage, picketing, or any similar device.

Appealing from the order denying its motion to dismiss, for want of jurisdiction, and the order granting the injunction, appellants, presenting four questions[3]

face that the Court is without jurisdiction of the subject matter.

"3. To dismiss the action on the grounds that the Court lacks jurisdiction because the petition shows that the plaintiff has not exhausted its administrative remedy.

"4. The petition shows upon its face that plaintiff is seeking an injunction under circumstances that are prohibited by the laws of the United States, to-wit, the Norris LaGuardia Act, Title 29, Sections 101-115 and seeks no other relief."

[3] These are:

"First. Were all of the requirements of the Norris-LaGuardia Act met so as to authorize an injunction under the facts here involved?

"Second. Did the railway carrier first exhaust its administrative remedies available under the Railway Labor Act so as to authorize an injunction under the facts here involved?

"Third. Is a demand for a change in rates of pay, rules or working conditions, pursuant to the Railway Labor Act, Sec. 6, a justiciable issue and basis for an injunction under the facts here involved?

"Fourth. Did the arbitration award in question conclude and thus prevent negotiation of the demand given by the Brotherhood to the Carrier pursuant to the Railway Labor Act, for compensation for coupling so as to authorize an injunction under the facts here involved?"

for our decision, thus summarize their principal argument for reversal:

> "In both the overruling of the motion to dismiss the carrier's complaint and in issuing the temporary injunction against the Brotherhood defendants, the trial court violated the Norris-LaGuardia Act. These violations were numerous, repeated and substantial. Duty and candor compel us to say they were also flagrant. Any one of those violations controls and should alone decide the case. Therefore, we shall treat this feature first, before taking up the additional reasons for reversal."

> "The policy of the Act as set forth in Section 102 prevades all of its provisions. It was passed primarily to protect labor, not management. By doing so, it was hoped that all industry, labor and management, would be benefited ultimately and thus that the Act would be in the public interest."

We agree with the appellants that this is so. In the Carter case, 131 F(2) 557 where the suit was for an injunction, the court upheld the injunction as to those acts which dealt with such violations as trespassing, injuring property, intimidating, or threatening customers, molesting, assaulting, or intimidating employees, but reversed the injunction in respect of all matters which could be construed as prohibiting acts which the statute allows. Saying:

> "The language of the act is too plain and the decisions construing it too clear cut and positive to admit of any doubt that the purpose and effect of the act, as a whole, was to give expression to, and make effective, the policy which breathes throughout it. This policy is that labor disputes, as such, with the assembling, the picketing, the

> persuasion, the stopping of work, the enlisting of sympathy and support, and all the other acts expressly enumerated in Section 104, were no longer to be the subject of injunctive action but were, and were expressly recognized to be, legitimate means of advancing the interests of the working man, and, therefore, of the people as a whole. In the light of that policy, which can be made fully effective only when there is a recognition on the part of employer and employee alike, that labor disputes as such are not at all reprobated but encouraged, and only violence in connection with them is forbidden . . ."

the court went on to hold that the use of injunctions in labor disputes, except for the limited purpose of preventing injury from violence where there was really no adequate remedy at law, was an abuse of legal process.

In the face of the imperative language of the section,[4] appellee's contention, that the act is not applicable because what was sought to be enjoined was action in breach of a contract embodied in the Cheney Award, is wholly untenable. The same contention has

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[4] "No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts: (a) Ceasing or refusing to perform any work or to remain in any relation of employment; *** (d) Aiding any persons involved in any labor dispute; (e) Giving publicity of any labor dispute; (f) Assembling to promote their interests; (g) Advising as to any of the acts heretofore specified; and (h) Agreeing with others to do or not to do any of the acts heretofore specified and (i) Causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in Sec. 103." 29 U.S.C. Sec. 104.

been rejected in case after case holding that the statute requires a contrary ruling.

Nor may appellee find better support for the injunction in its claim that the purpose of the strike and its effect would be to do violence to statutory procedures embodied in the statute for a disposition of controversies by the Railroad Adjustment Board. For, as has been held time and again, the purpose of the strike, whether it is or is not illegal, is not a limitation upon the prohibitions of the statute. Cf. *Wilson & Co. v. Birl*, 105 F(2) 948, and *East Texas Motor Freight Lines v. Teamsters*, 163 F(2) 10, where this court held that such a contention was an attempt to enlarge Federal Court jurisdiction as limited to enlarge Federal Court jurisdiction as limited by the act. Cf. also *Milk Wagon Drivers Union v. Lake Valley Farm Products*, 311 U.S. 91, and 43 C.J.S., 748 and 29 A.L.R.(2) 360.

In this view it is not necessary for us to determine whether, as contended by appellees, the strike, if called, would be violative of the Railway Labor Act, upon the theory either that it would violate the contract providing for the Cheney Award, or that it would violate the spirit and purpose of the Labor Act to conduct a strike while the issue which brought it about was pending before the Adjustment Board with jurisdiction to decide it. This is so because the fundamental weakness of appellee's position is that there is no express provision in the Labor Act in any way limiting the scope and operation of the prohibitions of the La-Guardia Act, and the claim of implied repeal because of a necessary conflict between the two acts is not borne out by a consideration of the language of the

two acts either apart from, or in connection with their legislative history.

It is true that the Railway Labor Act does contemplate that every reasonable effort will be made to maintain agreements and to avoid interruption to commerce, and that it contemplates that disputes be considered, and, if possible, decided expeditiously by negotiation and that if disputes over grievances are not adjusted on the property, they may be referred by both or either of the parties to the Adjustment Board. It is equally true, however, that none of the sections mandatorily provide that disputes must be submitted to the board rather than being handled by the voluntary methods provided for in the same act.

If, as appellee contends, Congress had, shortly after the passage of the Norris-LaGuardia Act, intended to curtail its provisions, limiting the equity jurisdiction of the courts in labor disputes so as to subject strike action to injunction, it is inconceivable, we think, that it would not have expressly so provided. Indeed, in *General Committee of Adjustments vs. M.K. & T.*, 320 U.S. 323, the Supreme Court expressly held that the Mediation Board's determination of such a controversy was not justiciable. In the light of that decision, appellee is under a burden too heavy to be borne when it seeks to justify the judicial remedy sought and obtained here by invoking a jurisdiction which the Norris-LaGuardia Act expressly withdraws from the Federal Courts.

In short, all that is for decision on this appeal is whether the Railway Labor Act has expressly or impliedly repealed the provisions of the LaGuardia Act,

denying jurisdiction to courts to enjoin strikes or work stoppages. Unless, therefore, it can be found that there has been such repeal, it is wholly necessary to determine whether, as appellee claims, the adjustment board has jurisdiction over the dispute or, as appellants claim, it does not have. Equally immaterial is the question whether the issue before the Adjustment Board is the same as that involved in the present case.

Further, appellee's contention, which prevailed with the district judge below and which it presses here, that the suit falls within the language of the LaGuardia Act making an exception to the grant of an injunction in situations where unlawful acts have been threatened and will be committed unless restrained, is wholly untenable. It is plain from the language and the context that the words "unlawful acts" means violence, breaches of the peace, criminal acts, etc., and that such terms do not include, they do not constitute a general reference to, anything that may be considered illegal but apply specifically to the acts of violence which authority is calculated to control. *Wilson & Co. v. Birl and Carter v. Herrin, supra.* Cf. 43 C.J.S., 702 and cases cited.

The complaint did not allege that any such violence was threatened or feared, indeed it was carefully framed with the purpose and intent, if possible, to plead a case not within but without the Norris-LaGuardia Act. The statement of the district judge in Finding 33, with reference to the degree of damage depending on the destruction and violence of the strike, and in Finding 34, with reference to the carrier's being threatened with unlawful acts by the defendants which would result in damage to its property, did not constitute find-

ings that physical violence had been threatened and would be committed, and, if they were intended to be such, they are without any support either in the pleadings or in the evidence. Neither was there allegation or supporting proof that police officers were unable or unwilling to furnish adequate protection.

In view of these conclusions, it is unnecessary for us to consider the points made by appellants that the carrier's own conduct in failing (1) to sincerely negotiate, (2) to apply for mediation, and (3) after mediation had begun to proceed with it, and (4) to exhaust its remedies before the Adjustment Board before resorting to suit, was such as to preclude it, under Section 108 of the Act, from seeking an injunction.

Finally, because of our expressed views that this case is one arising under the Norris-LaGuardia Act and the district court was without jurisdiction to proceed in it, we do not reach the last question dealt with in appellants' brief, whether the fault in respect of the Cheney Award was the carrier's rather than the employees'.

Appellee concedes that the basic and principal question on this appeal is whether or not the Norris-LaGuardia Act prohibits the district court in this case from taking jurisdiction and granting the pendente lite relief prayed. Conceding, too, that this is a case of first impression in any United States Court of Appeals, it urges upon us that the nature of the relief asked differentiates this case from all others and takes it out of the provisions of the Norris-LaGuardia Act, limiting the jurisdiction of the district court and directing its exercise. In emphasis of this argument, the appellee insists that it did not seek to have the dispute in ques-

tion settled by the district court, that it sought merely to maintain the status quo pending the decision of the question by the Adjustment Board.

Assuming that this is a correct statement of its pleadings, and treating its argument as directed to the fact that the injunctive action granted was limited, we think it plain that this makes no difference. The decisive, the fundamental questions here are, was this a labor dispute and did the suit seek to prevent by injunction what the act denies the court the power to prevent, and the answers to the questions must be in the affirmative.

The judgment is, therefore, **REVERSED**, and the cause is **REMANDED** with directions to dismiss the suit for want of jurisdiction.

BROWN, Circuit Judge, dissenting:

The Railroad, by complaint,[1] sought and the court

[1] The majority opinion states that the suit was for "(2) a judgment declaring the award final and binding and not subject to modification and change, * * *." With deference I do not so construe the record. In paragrph 30 of the complaint, the injunction sought is carefully restricted to "pending a determination of this controversy by the National Railroad Adjustment Board" and in the Prayer, that an injunction be issued restraining Brotherhood from "endeavoring to negotiate or * * * demanding a rule * * * prescribing extra compensation * * * for coupling and uncoupling air, steam or signal hose; * * * from calling a strike, work stoppage * * * directly or indirectly * * * because of * * * any feature of the controversy * * * described which has been referred to the National Railroad Adjustment Board * * * from endeavoring to negotiate a cancellation, change, modification or revision of the Award of Referee George Cheney * * * until the consideration of this controversy by the machinery of the National Railroad Adjustment Board has been exhausted in accordance with the provisions of the Railway Labor Act * * *." The Brotherhood's brief before us described the complaint and

granted an injunction[2] against the threatened, imminent strike by the Brotherhood pending the determination by the Railway Adjustment Board of the question submitted to it by the Railway of whether the Cheney Award decided "once and for all" the question of whose duty was the job of coupling and uncoupling steam and air hose, as claimed by the Railroad, or, as claimed by Brotherhood, was temporary in nature and open for negotiation.[3] No declaratory relief or interpretation of the Cheney Award was sought or obtained.

Prayer, (page 2) "It prayed for temporary restraining order, temporary injunction, and permanent injunction, enjoining a threatened strike because of attempts by the Brotherhood to re-negotiate for pay for coupling."

[2] The Decree carefully recites the purpose to be: "in order to preserve the status quo of the controversy now before the National Railroad Adjustment Board, * * *;

"Pending further order * * * and * * * a final hearing * * * the [Brotherhood] and others * * * are * * * enjoined * * * from threatening to or from calling a strike, work stoppage, or picketing * * * or from using any similar device * * * against the * * * Railway Company, and from striking, stoppage of work, picketing * * * in an effort to or designed or intended:

"A. To compel [Railroad] to agree with [Brotherhood] to a cancellation, modification, change or revision of the * * * Cheney [Award] * * *; or

"B. To compel the [Railroad] to agree to or to consummate a rule * * * inconsistent with the Cheney Award * * *; or

"C. To compel [Railroad] to agree to or to consummate a contract * * * prescribing extra compensation * * * for uncoupling air, steam * * * hose * * * inconsistent with the * * * Cheney Award.

* * * *

"This order is not to be construed as effecting any action of the [Brotherhood] in any particular, except as actions may involve the controversy now before the National Railroad Adjustment Board; and is also not to be construed as inhibiting a voluntary settlement of this dispute."

[3] The Cheney Award, seeking to resolve the provocative controversy raging since 1887 with the advent of the Westinghouse Air Brake, grew out of the impasse in the 1950 Railway-Brotherhood negotiations with its threat of a nationwide strike of all

At the outset, I am in complete agreement that, if the Norris-LaGuardia Act, 29 U.S.C.A. 101-115, applies, the Railroad has not met its terms and the injunction, even though limited, ought not to have been granted. Similarly, I concur that the mere fact that the strike involved some violation of law or is in breach of contract does not remove the controversy from the

Class I Railroads with the devastating consequences to the nation's economy and security. The Mediation Board, under the Railway Labor Act, attempted unsuccessfully to produce agreement or persuade the parties to arbitrate. Under the Act, the President of the United States appointed an Emergency Board whose findings the Brotherhoods declined to accept, requesting instead that the President take control of the Railroads. In December 1950, after extended Presidentially sponsored conferences, agreement was reached on all but a limited number of issues, then specified, including coupling of steam-air hoses. On May 25, 1951, all issues except two were settled, one being coupling air hoses, and on that date the parties agreed to submit the issues to a Presidentially appointed Referee, (George Cheney was named) "the decision of the Referee shall be final and binding on the parties, and shall become effective * * *."

On November 28, 1953, the Brotherhood, under 49 U.S.C.A. 156 made demand for contract changes, including pay increases for air-steam coupling. Threatened with strike over the issue and mediation failing, the Railroad filed in the Georgia State Court a suit for declaratory judgment under the Cheney Award declaring it final and binding and seeking injunction to effectuate it. The Railroad asserted below that Brotherhood contended, and the Supreme Court of Georgia agreed, that the State "Court is without jurisdiction * * * and * * * the matters involved are within the jurisdiction of the National Railroad Adjustment Board exclusively under Title 45, § 153(i) * * *." Central of Georgia Railway Co. v. Brotherhood of Railroad Trainmen, 85 S.E. 2d 413. Immediately, the Railroad submitted the controversy to the Railroad Adjustment Board. Then followed, in January and February 1955, the renewed demands for negotiation by the Brotherhood, the strike notices, efforts at mediation and submission to arbitration. The Railroad claimed, and the trial court found, that the Brotherhood was unwilling to allow the question of the extent, nature and effectiveness of the Cheney Award to be decided by the Railroad Adjustment Board and, a system-wide strike being imminent, an injunction was issued to permit it to be determined by the Adjustment Board.

sweeping prohibition of that Act. *Wilson & Co. v. Birl*, 3 Cir., 105 F.2d 948; *East Texas Motor Freight Lines v. Teamsters*, 5 Cir., 163 F.2d 10; *Carter v. Herrin Motor Freight Lines*, 5 Cir., 131 F.2d 557; *Milk Wagon Drivers Union v. Lake Valley Farm Products*, 311 U.S. 91, 85 L.Ed. 63.

But here injunction was sought and granted not because the contract forbade a strike, or to negotiate with the pressure of threatened strike was a violation of the contract, but rather because the contention and counter-contention of the effect and significance of the contract (Cheney Award) was itself a "dispute[s] between an employee or group of employees and a carrier * * * growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions * * *", 45 U.S.C.A. 153 First (i), the determination of which is committed exclusively, where voluntary negotiations fail as they did here, to the National Railroad Adjustment Board. And if the controversy was one for the Railroad Adjustment Board, then the refusal of the Brotherhood, and its members, to allow the statutory course to be followed, and its interference in that process by a system-wide strike designed to force the issue on the very controversy before that tribunal, became, not a mere violation of a general law (unavailable as an escape from Norris-LaGuardia), but an absolute violation of the very law designed to regulate and control labor controversies of the kind involved.

Ignoring this latter point with an undue preoccupation with artificial concepts of partial repeal or implied repeal of Norris-LaGuardia is, I think, the defect of the majority opinion. The question is not: which

repeals the other, and to what extent? It is rather the problem of frequent necessity in adjudication where two or more statutes, each bespeaking its own major policy, are accommodated and adapted to assure that the total policy reflected by all is effectuated.

This approach, substantiated by abundant authorities, has special merit here. Both statutes are the offspring of a common era, enacted (1932 and 1934) near the same time, with each intended as a major, delibierate and far-reaching change in national labor policy. Neither was intended as the repeal of the other. The enactment of one was not the repudiation of the policy of the other. They exist side by side and where, through the years, they have come into apparent collision, the courts, unfettered by awkward concepts of repeal, have found the way by which now one, now the other, has been found dominant and controlling.

In this light, Federal Courts have never been shackled by Norris-LaGuardia in giving life and force to the mandates of the Railway Labor Act. *Virginian Railway Co. v. System Federation;*[4] *Graham v. Brotherhood of Locomotive Firemen and Enginemen.*[5]

[4] 300 U.S. 515, 81 L.Ed. 789; injunction issued to require Railroad to bargain with Union certified by Mediation Board and not to bargain with another; notwithstanding that this controversy met many of the Norris-LaGuardia definitions of a "labor dispute" and the decree issued was of a type forbidden by Section 104, the Supreme Court rejected it as a bar: "It suffices to say that the Norris-LaGuardia Act can affect the present decree only so far as its provisions are found not to conflict with those of § 2, Ninth, of the Railway Labor Act, authorizing the relief which has been granted. Such provisions cannot be rendered nugatory by the earlier and more general provisions of the Norris-LaGuardia Act." Of course, Section 2, Ninth, 45 U.S.C.A. 152, Ninth, does not, as such, authorize injunctions.

[5] 338 U.S. 232, 240, 94 L.Ed. 22; injunction affirmed against a union forbidding unlawful discrimination toward non-members.

Of course, the Railway Labor Act is not a voluntary, free-will mechanism; it is one imposing substantial obligations on the parties, railway management and labor alike; and a court, by injunction, can compel the parties to carry out and effectuate its aims, *Texas and New Orleans R. Co. v. Brotherhood*, 281 U.S. 548, 74 L.Ed. 1034; *Virginian Railroad Co. v. System Federation, supra; Order of Railway Conductors v. Pit-*

"The respondent [Brotherhood] has strenuously urged throughout that in view of the provisions of the Norris-LaGuardia Act * * * the District Court was without jurisdiction to grant relief by injunction. * * * But this is not a question of first impression. In Virginian R. Co. v. System Federation, 300 U.S. 515, 81 L.Ed. 789, we held that the Norris-LaGuardia Act did not deprive federal courts of jurisdiction to compel compliance with positive mandates of the Railway Labor Act, 45 U.S.C.A. §§ 151 et seq, * * *, enacted for the benefit and protection, within a particular field, of the same groups whose rights are preserved by the Norris-LaGuardia Act * * *. We adhere to the views expressed in the Virginian case. But the Brotherhood urges that the controversy in the Virginian case did not involve a labor dispute within the meaning of the Norris-LaGuardia Act and that accordingly that case must be distinguished on its facts. * * * We do not accept the Brotherhood's invitation to narrow the meaning of that term. * * * Moreover, if this Court had considered that a labor dispute was not involved, it would hardly have taken the trouble, in the Virginian case, to refute contentions based upon parts of the Act, which as a whole extends its protection solely to such disputes. * * * If, in spite of the Virginian, Steele, and Tunstall cases * * *, there remains any illusion that under the Norris-LaGuardia Act the federal courts are powerless to enforce these rights, we dispel it now. * * *."

This completely dissipates, I think, the force of the argument of the majority: "If, as appellee contends, Congress had, shortly after the passage of the Norris-LaGuardia Act, intended to curtail its provisions, limiting the equity jurisdiction of the courts in labor disputes so as to subject strike action to injunction, it is inconceivable, we think, that it would not have expressly so provided, * * *." Of course, its emphasis on the prohibition of **strikes**, as such, ignores, as Justice Jackson pointed out, the wide character of controversies protected and remedies forbidden.

ney;[6] *Elgin, Joliet & E. R. Co. v. Burley;*[7] *Brotherhood of R. Trainmen v. Howard,*[8] including the resolution of disputes, grievances, and controversies through

[6] 326 U.S. 561, 90 L.Ed. 318; dispute over assignment of work on certain trains; one union contending that by virtue of a contract, not negotiated pursuant to Section 6, 45 U.S.C.A. 156, it was unlawfully given to another. Court recognizes that injunction can issue to compel compliance with the Act, including Section 6, but since question depends on the interpretation of the disputed contract, this was a matter for determination by the Adjustment Board. "Under these circumstances the Court should exercise equitable discretion to give that agency the first opportunity to pass on the issue. Certainly the extraordinary relief of an injunction should be withheld, at least, until then. * * * Only after the Adjustment Board acts, but not until then, will it plainly appear that such relief is necessary to secure compliance with the statute. * * *"

[7] 325 U.S. 711, 720, 721, 89 L.Ed. 1886, 1893; the court rejects the contention that an Adjustment Board award amounts to nothing more than an advisory opinion. "The contention, founded upon language of the opinion in Moore v. Illinois Central R. Co., 312 U. S. 630, 85 L.Ed. 1089, regards the Act's entire scheme for the settlement of grievances as wholly conciliatory in character, involving no element of legal effectiveness, with the consequence that the parties are entirely free to accept or ignore the Board's decision.

"At the outset we put aside this broadest contention as inconsistent with the Act's terms, purposes and legislative history. The **Moore** case involved no question concerning the validity or the legal effectiveness of an award when rendered. Nor did it purport to determine that the Act creates no legal obligations through an award or otherwise. * * * both prior and later decisions here are wholly inconsistent with such a view of its effects * * * 12 * * *." Footnote 12 then states: "Thus, one of the statute's primary commands, judicially enforceable, is found in the repeated declaration of a duty upon all parties to a dispute to negotiate for its settlement. * * * [citing cases] This duty is not merely perfunctory. Good faith exhaustion of the possibility of agreement is required to fulfill it. * * *; Brotherhood of R. Trainmen v. Toledo P. & W. R. Co., 321 U.S. 50, 88 L.Ed. 534, 538. * * *. At successive stages of the statutory procedure other duties are imposed. Cf. §§ 5 First (b), 6, 10."

[8] 343 U.S. 768, 96 L.Ed. 1283; "In fashioning its decree the District Court is left free to consider what provisions are necessary to afford these employees full protection from future dis-

the administrative machinery of the Adjustment Board set up under the Act.[9]

criminatory practices of the Brotherhood. However, in drawing its decree, the District Court must bear in mind that the disputed questions of reclassification of the craft of "train porters" are committed by the Railway Labor Act to the National Mediation Board."

[9] Rolfes v. Dwellingham, 8 Cir., 198 F.2d 591: injunction issued in case involving allocation of work between competing classification of employees, to remain in force pending determination by the National Railway Adjustment Board of the question of jurisdiction involved or for a reasonable time for the waiters to invoke the jurisdiction of the Board. Equitable relief was granted "in aid of the administrative machinery provided for the adjustment of disputes in the Railway Labor Act," * * * and "limited its injunction strictly to the purpose of affording opportunity for the administrative Board to function as contemplated by the Act. * * * The Railway Labor Act contemplates that the Boards which it sets up shall function through process of mediation and interpretation of disputed contracts to minimize conflicts and interruptions of commerce. * * * When the action was found to be wrongful and violative of the provisions of the Act, it was the duty of the court, and it properly acted, to restore the plaintiffs to their position before the wrongful action was taken against them." Court expressly states that **Graham, Virginian, Steele,** and **Tunstall** are "equally conclusive that the Norris-LaGuardia Act does not deprive the federal courts of power to issue such an injunction * * * in aid of the administrative Board and to preserve the right of the waiters-in-charge to resort to the administrative procedure provided by * * * the * * * Act."

M.K.T. R. Co. v. Brotherhood of Railway Clerks, 7 Cir., 188 F.2d 302: institution of suits by the Brotherhood to enforce awards on allocation of work between competing classifications enjoined, as awards illegal for want of notice.

M.K.T. R. Co. v. National Railroad Adjustment Board, N.D. Ill., 128 Fed. Supp. 331: injunction issued against Brotherhood and Board to forbid efforts to enforce conflicting, contradictory awards made without adequate notice pending a determination of all of the cases consolidated by further award of the Board.

Brotherhood of Railroad Trainmen v. Templeton, 8 Cir., 181 F.2d 527, cert. denied 95 L.Ed. 605, 643: injunction issued against Brotherhood to forbid enforcement of and practices under awards made without adequate notice on allocation of work between competing classifications.

Railway Employees Cooperative Association v. A. B. & C. Railroad Co., D.C.Ga., 22 Fed.Supp. 510: injunction issued

The National Railway Labor Act is not for labor alone. To be sure it benefits labor greatly, but its underlying purpose is to assure industrial peace in an important phase of our national economy. It is a double-track system; the trains run both ways simultaneously, and when equity can compel a Railroad to comply, *T. & N.O. R. Co. v. Brotherhood, Virginian R. Co. v. System Federation, supra,* so, too, may it compel obedience by unions, *Brotherhood of Trainmen v. Howard, Graham v. Brotherhood of Locomotive Firemen & Enginemen, supra.*

It seems equally plain that a genuine difference over the meaning and effect of a contract is a grievance which must be submitted to and decided by the Railway Adjustment Board, *Slocum v. Delaware L. & W. R. Co.;*[10] *Order of Railway Conductors of America*

against Railroad prohibiting interference with union selection of bargaining representative pending decision by Railway Labor Board machinery.

Cf. B. & N.O. R. Co. v. Chicago River & Indiana R. Co., 7 Cir., 170 F.2d 654, cert. denied 93 L.Ed. 1101; M.K.T. R. Co. v. Randolph, 8 Cir., 164 F.2d 4.

Union Premier Food Stores v. Retail Food C. & M. Union, 3 Cir., 98 F.2d 821, reversed as moot, 308 U.S. 536, 84 L.Ed. 445, presented substantially the same problem under the National Labor Relations Act; injunction was issued against a strike where, in a representation controversy, the employer was neutral and the matter was then awaiting decision by the National Labor Relations Board.

[10] 339 U.S. 239, 94 L.Ed. 795; referring to the Act's purpose to avoid interruption to Commerce, 45 U.S.C.A. 151a, Court stated: "* * * This purpose extends both to disputes concerning the making of collective agreements and to grievances arising under existing agreements. [cites **Elgin** case supra] The plan of the Act is to provide administrative methods for settling disputes before they reach acute stages that might be provocative of strikes. Carriers are therefore required to negotiate with bargaining representatives of the employees. [cites **Virginian,** supra] The Act also sets up machinery for conciliation, mediation, arbitration and adjustment of disputes to be invoked if nego-

v. Southern Railway Co., 339 U.S. 255, 94 L.Ed. 811, once that procedure has been invoked by one of the parties.[11]

The legislative scheme for these matters to be first determined by the expertise of the Adjustment Board is completely frustrated if resort by either party to court or any other activity which prevents the free functioning of this machinery is permitted. Requiring the submission of these grievances to the Adjustment Board contemplates the exercise of deliberative judgment in the light of its special industrial experience.

No matter how informal the proceedings might be, or how unlike lawyers and judges the mechanism may function, the whole spirit is that the result is to be an informed judgment. That means that the adjustment machinery must be free to consider the controversy in the light of its inherent merits, free from extrinsic pressures. This deliberation, this exercise of judgment, cannot take place if either of the parties can marshal and deploy pressures and forces, economic or otherwise, which will interfere with or interrupt or, more likely make altogether unnecessary or futile the operation of this machine.

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tiations fail. * * * It was to prevent such friction that the 1926 Act provided for creation of various Adjustment Boards by voluntary agreement between carriers and workers. * * * But this voluntary machinery proved unsatisfactory, and in 1934 Congress, with the support of both unions and railroads, passed an amendment which directly created a national Adjustment Board * * * The Act thus represents a considered effort on the part of Congress to provide effective and desirable administrative remedies for adjustment of railroad-employee disputes growing out of the interpretation of existing agreements. * * *"

[11] Elgin, Joliet & E. R. Co. v. Burley, 325 U.S. 711, 727, 89 L.Ed. 1886, 1896, "Each party to the dispute may submit it for decision, whether or not the other is willing * * *."

A strike, or the threat of a strike, is but one kind of interference with the orderly operation of this mandatory system. If, merely because the union might ultimately strike after a final award by Adjustment Board or decision of Mediation Board, a strike, or threat of strike, can be used initially to thwart consideration or determination it would make the whole procedure futile. Surely, in the establishment of this system, Congress expected that machinery constructed for the purpose of eliminating strikes should have adequate means to control or regulate the force or threat of such action until the statutory device should have had an opportunity to function.

This does not impinge upon the basic policies reflected in the Norris-LaGuardia Act or the elemental rights which seem to inhere in the right to strike. A court of equity is not being used, as was so often formerly the case, to upset the balance or imbalance of competing economic forces in order to give one party, rather than the other, weight or advantage in a private controversy between labor and management. Here a court of equity exerts its power to fulfill the predominant public interest in having provocative (but as here otherwise relatively insignificant) controversies determined by the public agency established by law for that very purpose. In this way the equity court, not ranging on the side of one against the other, adheres strictly to the position of impartial enforcement of law—an imposition on each and both of the duty to use freely, and in good faith exhaust, this statutory machinery for the determination of these controversies.

A real, genuine, spirited disagreement exists as to the meaning, application and effect of the Cheney

Award—whether, as claimed by Railroad, it solved the air coupling problem forever, or, as contended by Brotherhood, foreclosed it only during the life of the 1950 contract of which the Cheney arbitration was a part, and, whether, in either case, it would prohibit efforts by the Brotherhood to secure changes in contracts concerning the future. If the Railroad is right, the Brotherhood should be held to the bargain made inducing the Cheney arbitration and award; if the Railroad is wrong, the Brotherhood should be free to negotiate with all the pressures and forces it can marshal.

That controversy is for determination by the machinery of the National Railway Labor Act. The decree permits the machine to work. It was right, in my judgment.

I therefore respectively dissent.

A True Copy:
Teste:

(Seal of the Court)

(Sgd.) John A. Feehan, Jr.
Clerk of the United States Court of
Appeals for the Fifth Circuit.

Appendix "B"

JUDGMENT.

Extract from the Minutes of February 10, 1956.

BROTHERHOOD OF RAILROAD TRAINMEN, LOCAL LODGE NO. 721, ET AL.,

No. 15671. versus

CENTRAL OF GEORGIA RAILWAY COMPANY

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Georgia, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, reversed, and that this cause be, and it is hereby, remanded to the said District Court with directions to dismiss the suit for want of jurisdiction;

It is further ordered and adjudged that the appellee, Central of Georgia Railway Company, be condemned to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

"Brown, Circuit Judge, dissenting."

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CERTIFICATE OF SERVICE

I, JOHN B. MILLER, attorney for Central of Georgia Railway Company, Petitioner, do hereby certify that I have this day mailed with proper postage affixed a copy of the foregoing petition for certiorari to Benning M. Grice, Esquire, Counsel of record for Respondent, at his office address in Macon, Georgia.

This 10th day of May, 1956.

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JOHN B. MILLER